2011-2012

SENATE
COMMERCE

MINUTES

Senate Commerce Committee
2011-2012

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JOINT HOUSE AND SENATE COMMERCE COMMITTEES
Wednesday, February 16, 2011 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The House and Senate Commerce Committees met jointly at 10:00 AM on February 16, 2011, in Room 643 of the Legislative Office Building. Twelve Senate members of the committee were present. Senator Brown and Representative McComas presided.

Senator Brown asked that the House and Senate Commerce staff introduce themselves.

Employment Security Commission

David Clegg, Deputy Commissioner of the Employment Security Commission (ESC) was recognized. He gave an overview of the "macro and micro" of North Carolina's unemployment with a standpoint from North Carolina's economy and then answered questions. A copy of his powerpoint presentation and handouts is attached.

NC Rural Economic Development Center

Billy Ray Hall, President of the NC Rural Economic Development Center, was recognized. He explained the Capital Access Program, which is expected to create 27,283 jobs through increased business lending. The federal Small Business Jobs Act will create a $46.1 million federal investment in North Carolina with voluntary participation for lenders. A copy of Mr. Hall's powerpoint is attached.

The meeting adjourned at 11:17 a.m.

Senator Harry Brown, Presiding

DeAnne Mangum, Committee Clerk

Joint House and Senate Commerce Committee
Wednesday, February 16, 2011, 10:00 AM
643 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

Employment Security Commission
David Clegg, Deputy Chair

NC Rural Economic Development Center
Billy Ray Hall, President

NC Office of Information Technology Services
Jerry Fralick, Chief Information Officer

Adjournment

Employment Security Commission of North Carolina

ESC

David L. Clegg
Deputy Chairman & Chief Operating Officer

February 16, 2011

Joint Committee on Commerce and Job Development

US Recession

- National Bureau of Economic Research (NBER) Business Cycle Dating Committee
  - Recession Officially Began December 2007
    - Significant decline in economic activity spread across the economy lasting more than a few months, normally visible in production, employment, real income and other indicators.
  - Officially Recession Ended June 2009 - Lasted 18 months
    - 1973-1975 – 16 months
    - 1980 – 6 months
    - 1981-1982 – 16 months
    - 1990-1991 – 8 months
    - 2001 – 8 months
  - We are still dealing with a prolonged period of high unemployment and slow job growth

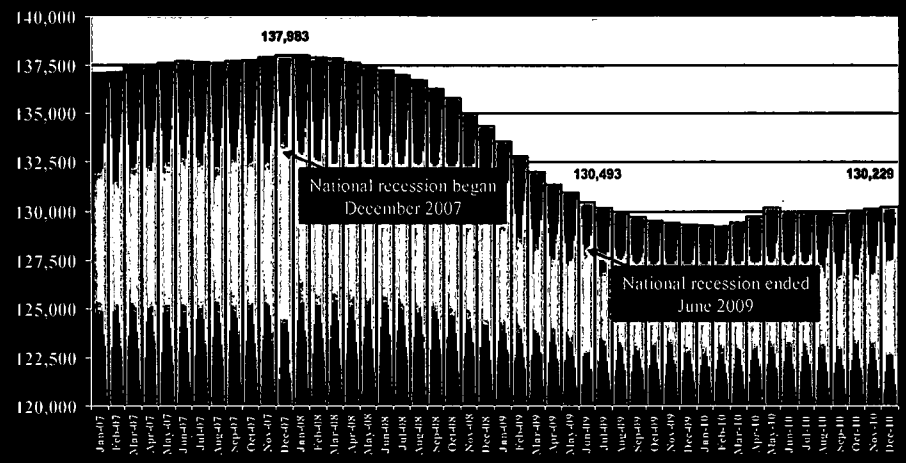
National Situation

- Between December 2007 and December 2010
  - Decrease of 7.8 million (5.6%) Nonfarm jobs
  - 4.2 million Goods Producing
    - 2.2 million – Manufacturing
    - 2.0 million – Construction
  - 3.6 million Service Providing
    - 2.0 million – Trade, Transportation & Utilities
      - 1,136,800 – Retail Trade
    - 1.2 million – Professional & Business Services
      - 578,300 – Employment Services
    - 0.6 million – Financial Activities

Data are seasonally adjusted. Data are benchmarked.

National Employment

U.S. Nonfarm Employment
January 2007-December 2010
(Seasonally Adjusted, in thousands)



Data are benchmarked. December 2010 data are preliminary.

National Situation

- As of December 2010
  - 6.8 million more individuals unemployed in the United States than in December 2007
    - 6.4 million Long Term Unemployed (27 weeks or more)
  - Lost 7.8 million jobs
    - Need to add 129,233 net jobs a month for the next 60 months to reach December 2007 employment levels

North Carolina Situation

- Between December 2007 and December 2010
  - Total Nonfarm jobs decreased 272,800 (6.5%)
  - Goods Producing decreased 184,100 (23.3%)
    - Manufacturing — 98,000 (18.4%)
    - Construction — 85,300 (33.9%)
  - Service Providing decreased 88,700 (2.6%)
    - Trade, Transportation & Utilities — 69,600 (8.9%)
    - Professional & Business Services — 21,400 (4.2%)
    - Leisure & Hospitality Services — 20,700 (5.1%)
    - Financial Activities — 12,200 (5.7%)
  - Total Private Employment decreased 306,700 (8.8%)
  - Education and Health Services increased 18,400 (3.5%)

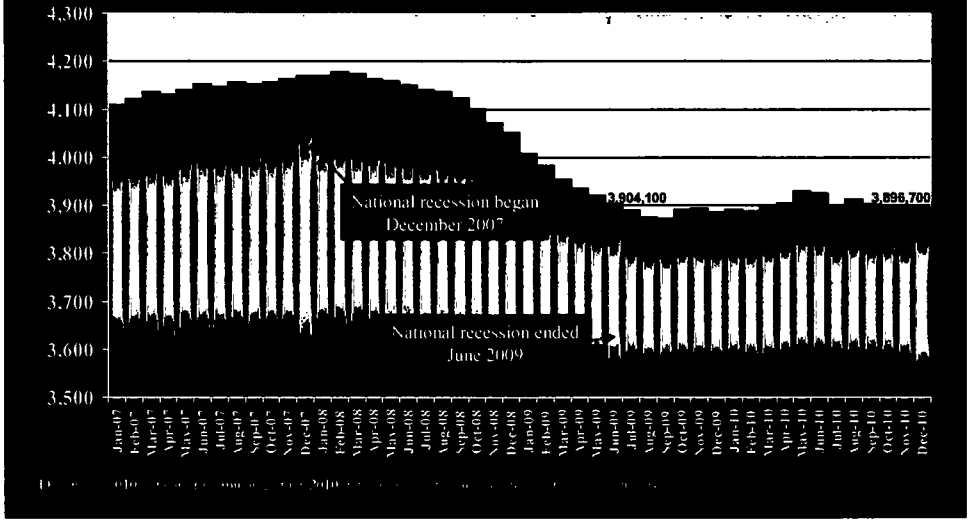
December 2010 data are preliminary and December 2007 data are benchmarked. Data are seasonally adjusted

North Carolina Employment

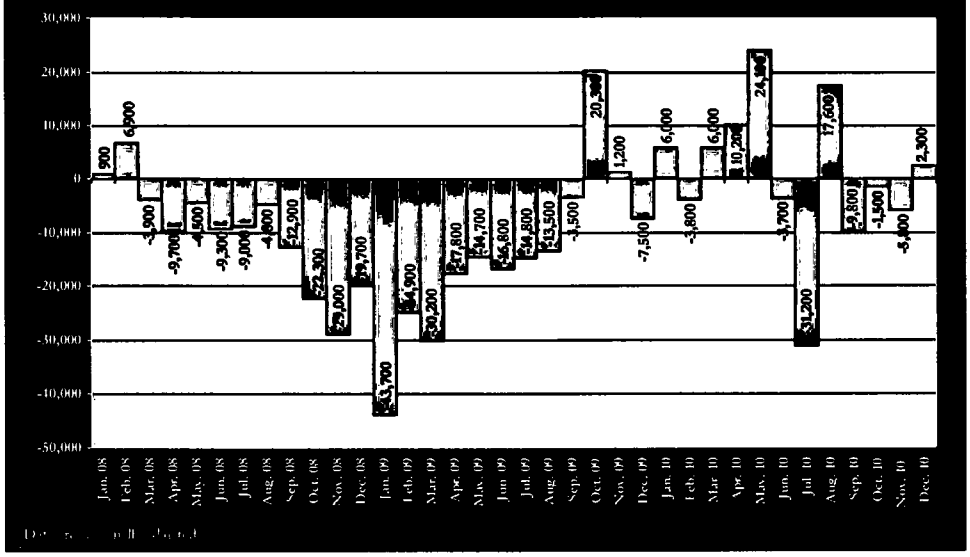
Nonfarm Employment

January 2007-December 2010

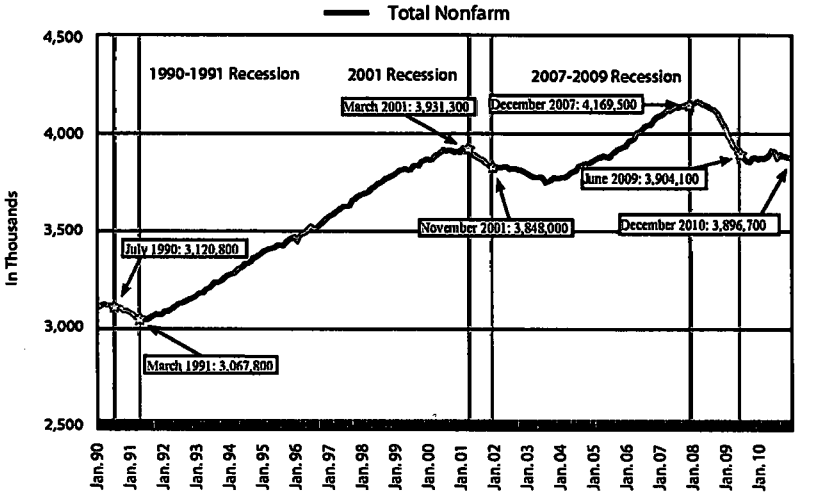
(Seasonally Adjusted, in thousands)



North Carolina
Monthly Employment Change
January 2008-December 2010

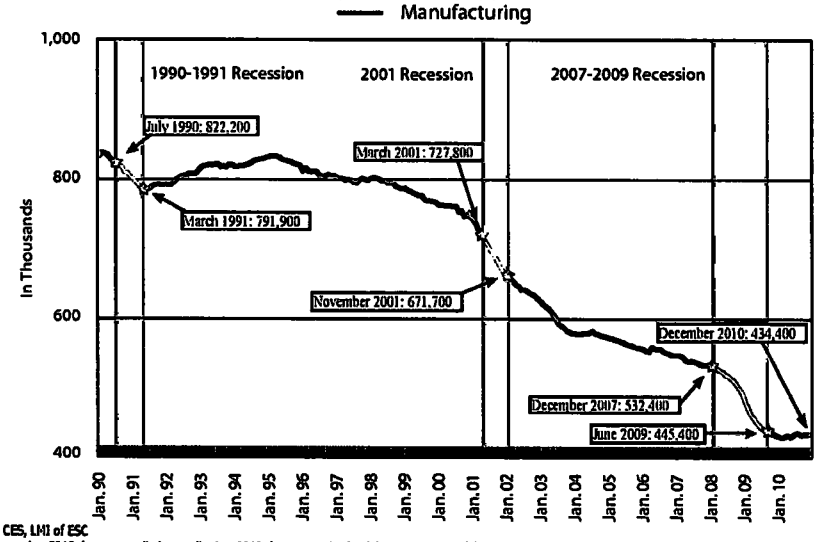


North Carolina Total Nonfarm Employment
January 1990-December 2010
(Seasonally Adjusted)



Source: CES, LMI of ESC
Note: December 2010 data are preliminary, all other 2010 data are revised, while previous years' data are benchmarked. Recession periods documented in above graph represent the dates July 1990-March 1991, March 2001-November 2001, and December 2007-June 2009.

North Carolina Manufacturing
January 1990-December 2010
(Seasonally Adjusted)



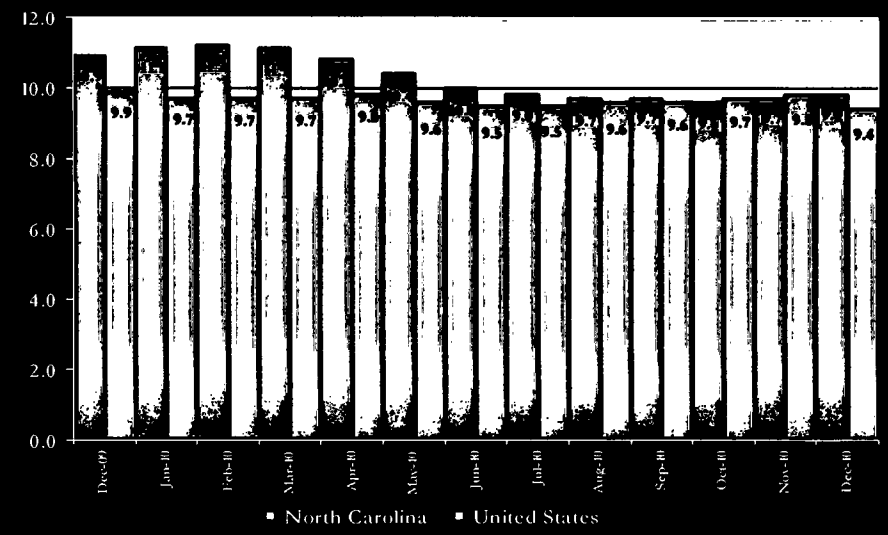
Source: CES, LMI of ESC
Note: December 2010 data are preliminary, all other 2010 data are revised, while previous years' data are benchmarked. Recession periods documented in above graph represent the dates July 1990-March 1991, March 2001-November 2001, and December 2007-June 2009.

Manufacturing Production Hours and Earnings
2010

Month	Average Weekly Hours	Average Hourly Earnings	Average Weekly Earnings
January	40.0	$16.00	$640.00
February	39.6	$16.00	$633.60
March	40.0	$15.94	$637.60
April	40.3	$16.03	$646.01
May	40.7	$15.82	$643.87
June	40.5	$15.88	$643.14
July	39.7	$15.98	$634.41
August	40.4	$15.61	$630.64
September	40.5	$15.65	$633.83
October	41.1	$15.73	$646.50
November	40.8	$15.77	$643.42
December[P]	41.4	$15.87	$657.02
AVERAGE	40.3	$15.86	$640.84

[P]: Preliminary

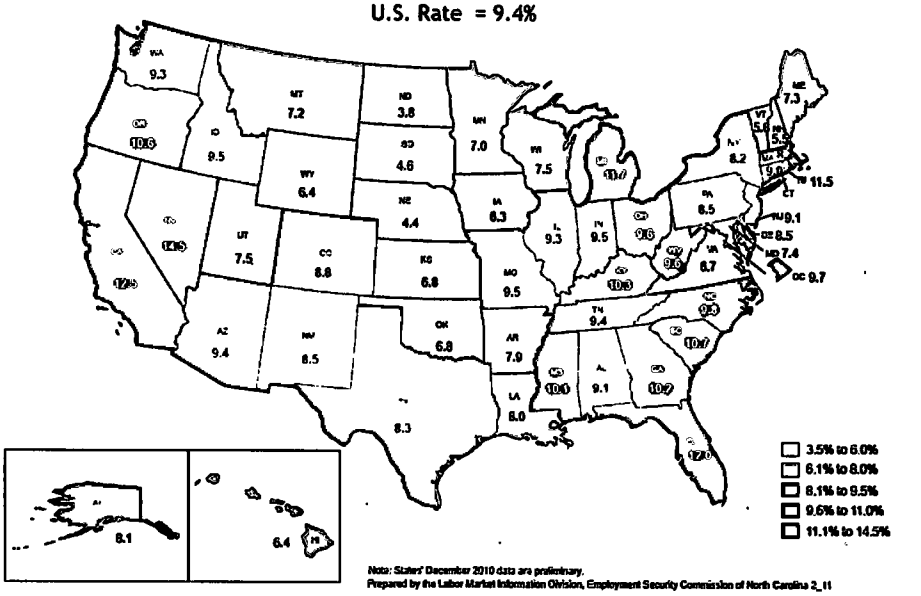
United States/North Carolina Unemployment Rates
December 2009-December 2010
(Seasonally Adjusted)



Note: North Carolina's December 2010 data are preliminary, all other 2010 are revised, while all other years' data are benchmarked.

Unemployment Rates By State, Seasonally Adjusted
December 2010

U.S. Rate = 9.4%

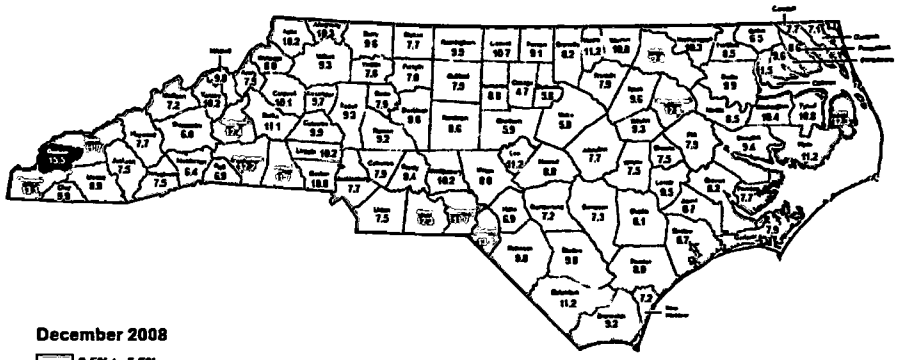


Note: States' December 2010 data are preliminary.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_11

North Carolina Situation

- As of December 2010
  - 215,665 more individuals unemployed in North Carolina than in December 2007
  - Lost 272,800 jobs
    - Need to add 4,547 net jobs a month for the next 60 months to reach December 2007 employment levels

North Carolina Unemployment Rates by County
December 2008



December 2008

- 3.5% to 5.5%
- 5.6% to 8.5%
- 8.6% to 11.5%
- 11.6% to 14.5%
- 14.6% to 17.5%

^ 95 Counties Higher Than Previous Month

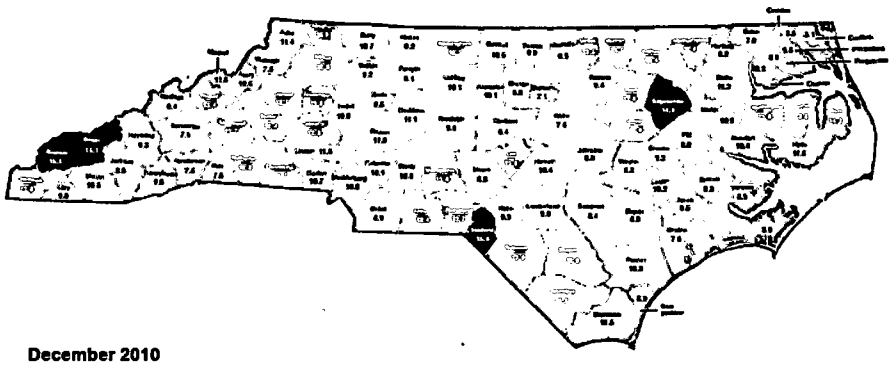
v 3 Counties Lower Than Previous Month

= 2 Counties Same as Previous Month

North Carolina Rate 8.1%
Not Seasonally Adjusted

Note: December 2008 data are benchmarked.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 01_2011

North Carolina Unemployment Rates by County
December 2010



December 2010

- 3.5% to 5.5%
- 5.6% to 8.5%
- 8.6% to 11.5%
- 11.6% to 14.5%
- 14.6% to 17.5%

^ 27 Counties Higher Than Previous Month

v 66 Counties Lower Than Previous Month

= 7 County Same as Previous Month

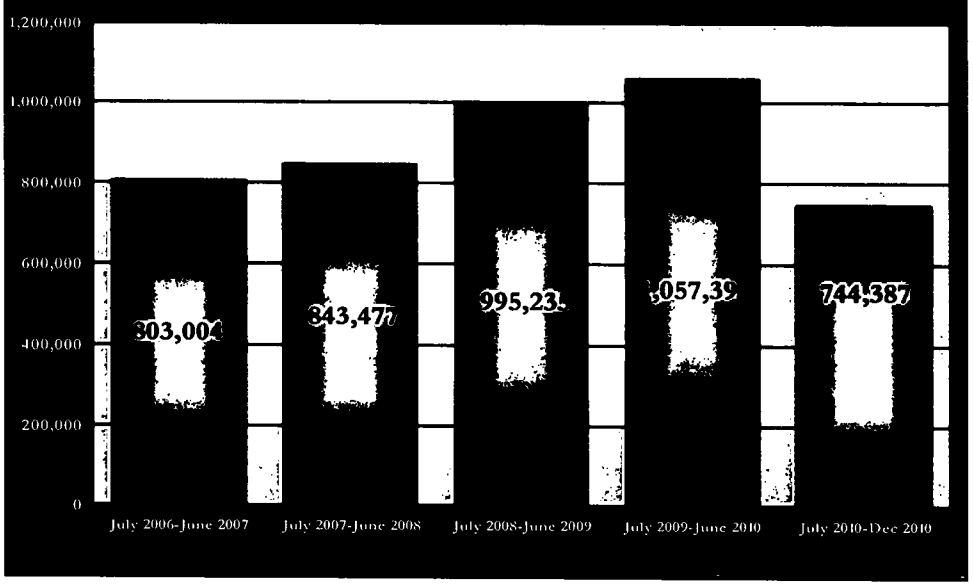
North Carolina Rate 9.7%
Not Seasonally Adjusted

Note: December 2010 data are preliminary.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1_2011

Impact of Economic Recession on the Employment Security Commission

- As the state experienced economic recession citizens turned to the Employment Security Commission for assistance
  - Increased Numbers of Customers to ESC Local Offices
  - Increased Claims for Unemployment Insurance Benefits
  - Pressures on the Unemployment Insurance System
  - Increased Requests for Information

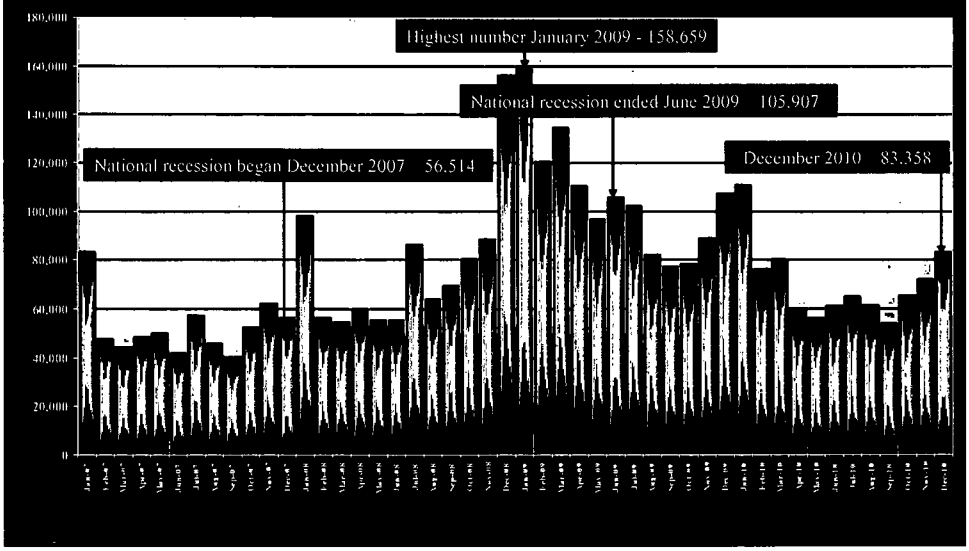
Employment Services
Registered Applicants



Unemployment Insurance

- Total Benefits Paid
  - January 2010 - December 2010
- State Benefits Paid
  - January 2010– December 2010
- Total UI Taxes Collected
  - January 2010 - December 2010

Regular Initial Claims
January 2007-December 2010

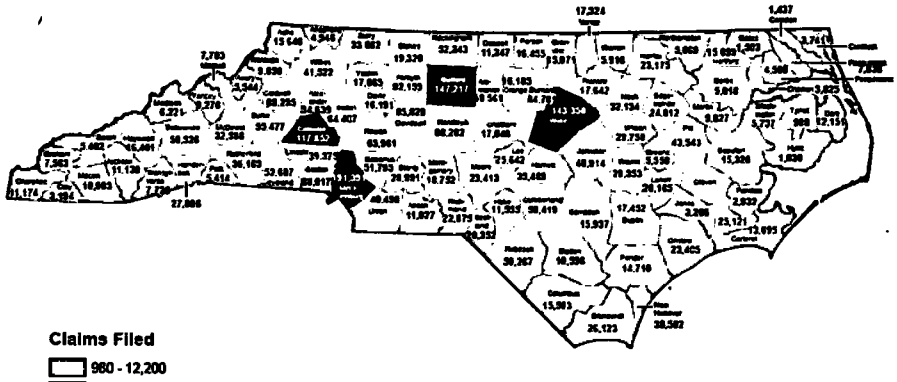


Initial Claims

- Over the last 3 years ESC Processed Over 3 Million Initial Claims for Regular Unemployment Insurance

Initial Claims for Regular Unemployment Insurance Benefits			
Year	Total	Monthly Average	Percentage Attached Claims
2006	612,050	51,004	54.7%
2007	629,954	52,496	54.3%
2008	924,716	77,060	53.9%
2009	1,263,634	105,303	58.6%
2010	844,817	70,401	47.2%

North Carolina
Regular Initial Claims Filed by County
January 2008-December 2010

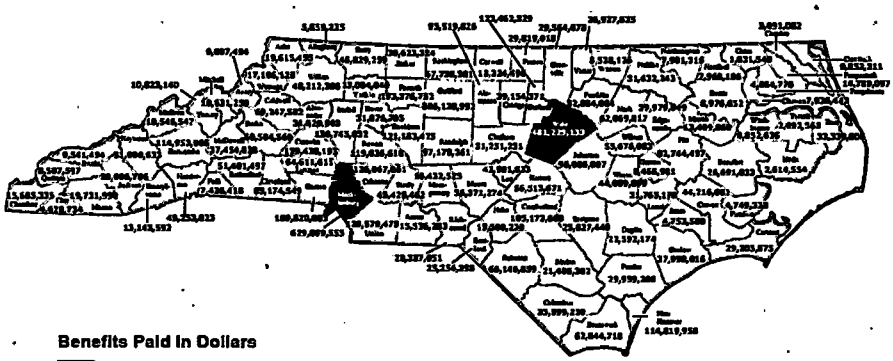


Claims Filed
- 960 - 12,200
- 12,201 - 30,500
- 30,501 - 52,700
- 52,701 - 92,200
- 92,201 - 191,400

Statewide 3,033,167

Note: County data does not sum to statewide total
Source: ETA Reporting
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina
UI Benefits Paid by County
January 2008-December 2010



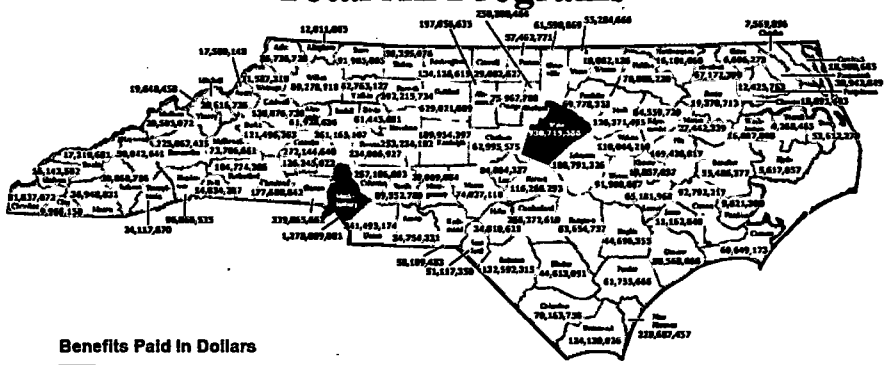
Benefits Paid In Dollars

- 1,831,540 - 21,405,390
- 21,405,391 - 51,401,500
- 51,401,501 - 105,173,890
- 105,173,891 - 306,129,000
- 306,129,001 - 629,899,560

Statewide $6,029,022,671

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina
UI Benefits Paid by County
January 2008-December 2010
Total All Programs



Benefits Paid In Dollars

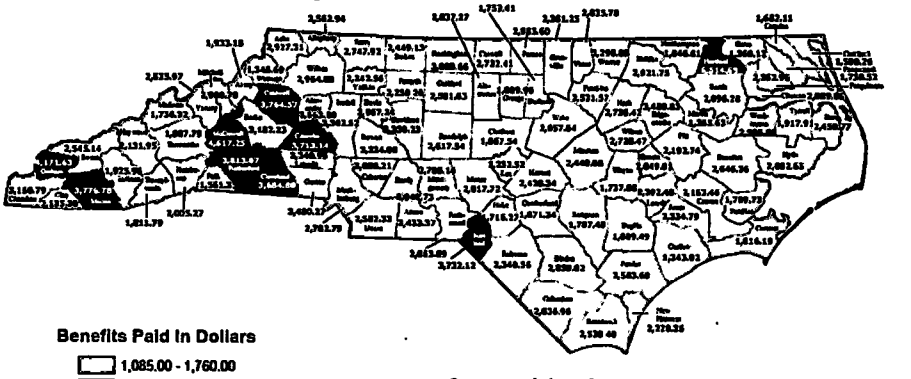
- 4,268,460 - 44,696,360
- 44,696,361 - 104,774,390
- 104,774,391 - 197,056,640
- 197,056,641 - 629,021,090
- 629,021,091 - 1,278,809,005

Statewide $11,917,266,824

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina
Total All Benefits Paid
Per Capita Civilian Labor Force
January 2008-December 2010



Benefits Paid In Dollars

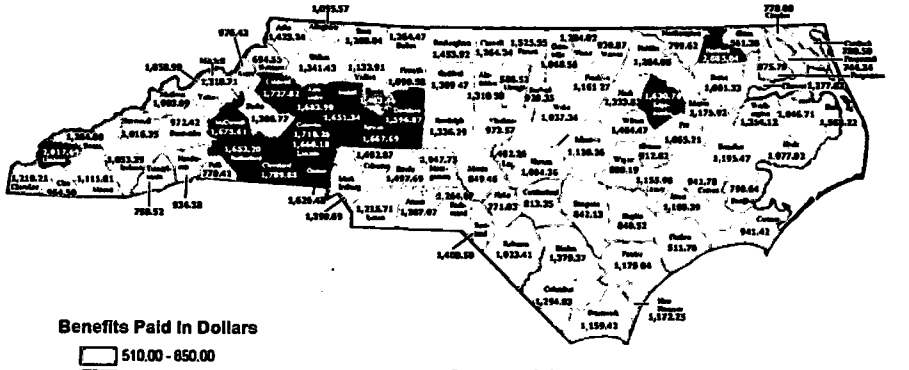
- 1,085.00 - 1,760.00
- 1,760.01 - 2,250.00
- 2,250.01 - 2,785.00
- 2,785.01 - 3,565.00
- 3,565.01 - 6,515.00

Statewide $2,639.08

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina
Total All Programs
Per Capita Benefits Paid
January 2008-December 2010



Benefits Paid In Dollars

- 510.00 - 850.00
- 850.01 - 1,060.00
- 1,060.01 - 1,220.00
- 1,220.01 - 1,565.00
- 1,565.01 - 2,890.00

Statewide $1,270.38

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS); Census Bureau Population Estimates July 2009.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 3_2011

Qualifying for Unemployment Insurance Benefits

- Unemployed through no fault of the worker
- Work force attachment during the base period (employment in at least two of the four calendar quarters) or the alternate base period
- Wage requirements: the worker must have earned at least 1 ½ times the high wages during the base period

Unemployment Insurance

- Effective August 1, 2010
  - Maximum Weekly Benefit Amount $506.00
  - Maximum Benefit Amount $13,156.00

Calculating the Benefit Amount

- Benefits are intended to approximate 50 percent of the high quarter earnings up to a maximum of 66 2/3 percent of the state average weekly wage.
- The weekly benefit amount is equal to the high quarter wage divided by 26.

Unemployment Insurance

- Benefit Weeks
  - Regular Unemployment Insurance
    - UI – 26 weeks
  - Extended Benefits –
    - EB – 20 weeks
  - Extended Unemployment Compensation Tier I
    - (EUC Tier I) – 20 weeks
  - Extended Unemployment Compensation Tier II
    - (EUC Tier II) – 14 weeks
  - Extended Unemployment Compensation Tier III
    - (EUC Tier III) – 13 weeks
  - Extended Unemployment Compensation Tier IV
    - (EUC Tier IV) – 6 weeks
  - Individuals may be eligible for up to 99 weeks of benefits

Unemployment Insurance Update

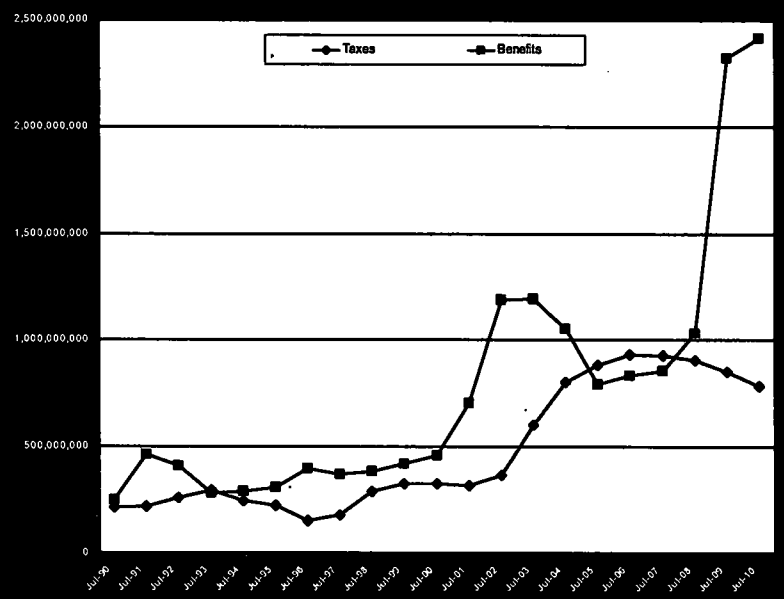
- Recent and Projected Benefits Exhaustions As of February 2, 2011

Projected to Exhaust in Next 60 Days	20,203
Projected to Exhaust in 61 to 120 Days	40,839
Projected to Exhaust in 121 to 180 Days	54,017
Projected to Exhaust in More than 180 Days	256,495

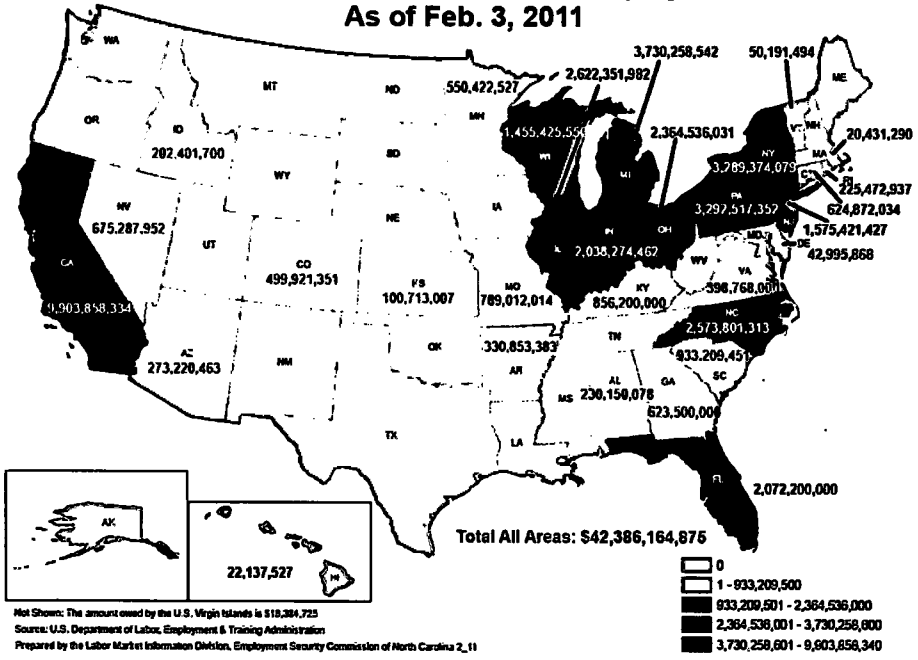
Benefits vs. Tax Collections (in thousands)

Year	Tax Collections	Benefits	Trust Fund
1995	$225,540	$307,804	$1,499,887
1996	$150,656	$398,847	$1,383,604
1997	$177,130	$371,708	$1,279,586
1998	$291,593	$385,790	$1,272,798
1999	$327,527	$419,319	$1,267,232
2000	$326,670	$459,685	$1,219,353
2001	$319,337	$706,494	$906,711
2002	$367,970	$1,192,915	$368,517
2003	$602,211	$1,196,798	($23,433)
2004	$803,674	$1,056,019	($273,232)

UI Trends - Taxes and Benefits



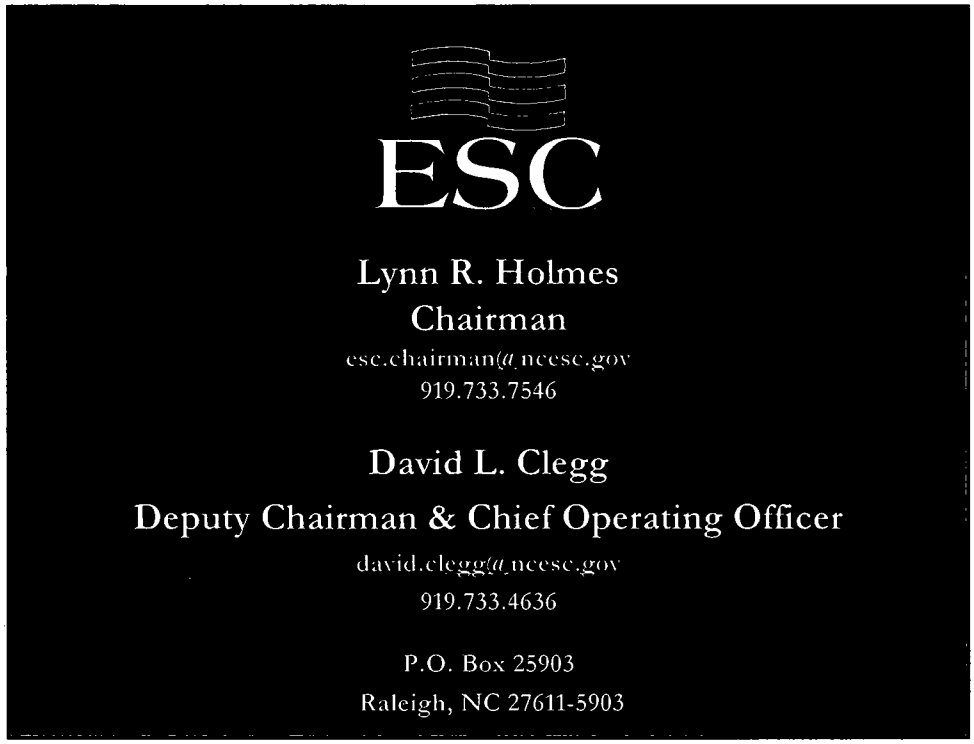
States With Loans From the Federal Unemployment Account As of Feb. 3, 2011



Not Shown: The amount owed by the U.S. Virgin Islands is $18,384,725

Source: U.S. Department of Labor, Employment & Training Administration

Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_11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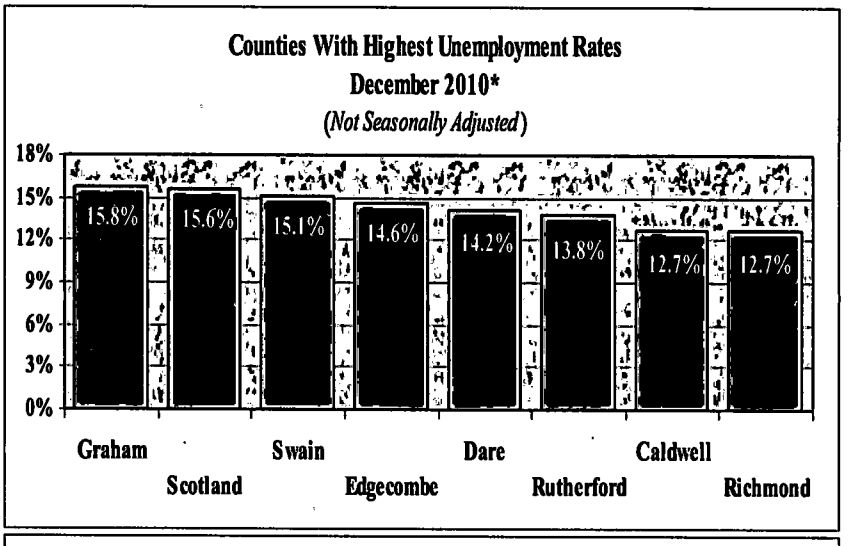
NORTH CAROLINA COUNTY LABOR MARKET CONDITIONS
DECEMBER 2010

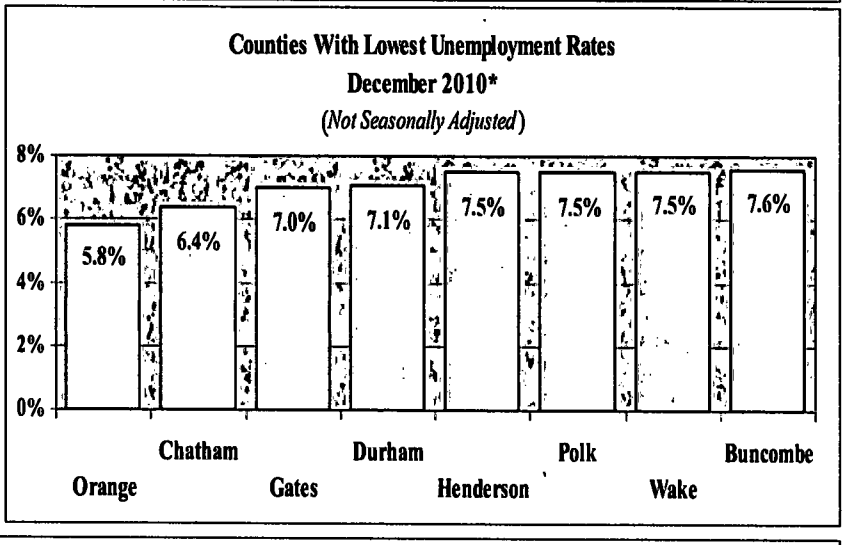
th Carolina's statewide unemployment rate (not seasonally adjusted) was 9.7 percent in December. This was a 0.2 of a percentage point decrease from November's revised rate of 9.9 percent, as well as a 1.2 percentage point drop over the year.

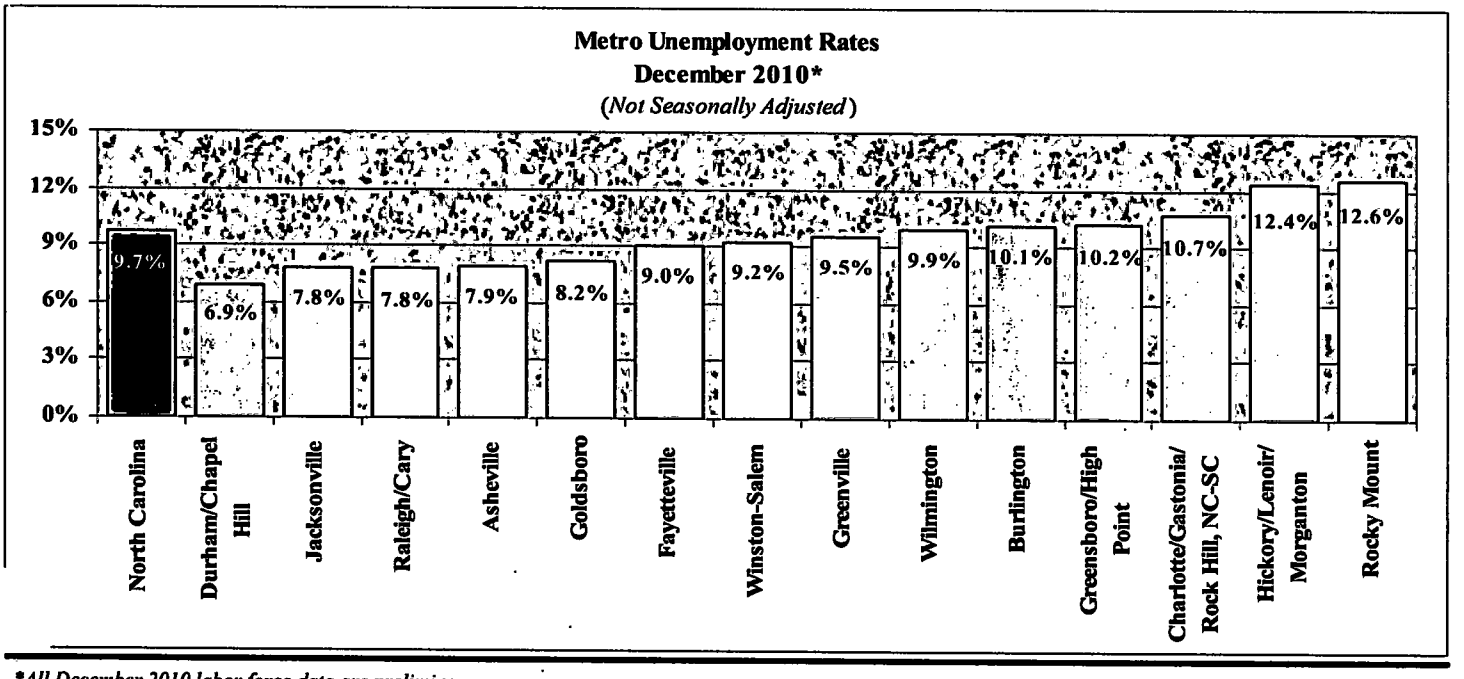
Over the month, the unemployment rate decreased in 66 counties, increased in 27, and was unchanged in seven. Forty counties had unemployment rates below the state's 9.7 percent rate.

Graham County recorded December's highest unemployment rate at 15.8 percent, 3.1 percentage points lower than last month. Scotland County had the second-highest rate at 15.6 percent. Orange County had the lowest unemployment rate at 5.8 percent, followed by Chatham, 6.4 percent; Gates, 7.0 percent; Durham, 7.1 percent; and Henderson, Polk, and Wake, 7.5 percent.

Unemployment rates decreased in all of the state's 14 Metropolitan Statistical Areas (Metros) over the previous month. The Rocky Mount Metro had the ·-hest unemployment rate in December at 12.6 :ent. The Durham/Chapel Hill Metro had the 'est unemployment rate at 6.9 percent, which decreased 0.3 of a percentage point from the previous month. Jacksonville and Raleigh/Cary followed at 7.8 percent. Jacksonville decreased by 0.1 of a percentage point, while Raleigh/Cary declined by 0.4 of a percentage point from the prior month.







*All December 2010 labor force data are preliminary.

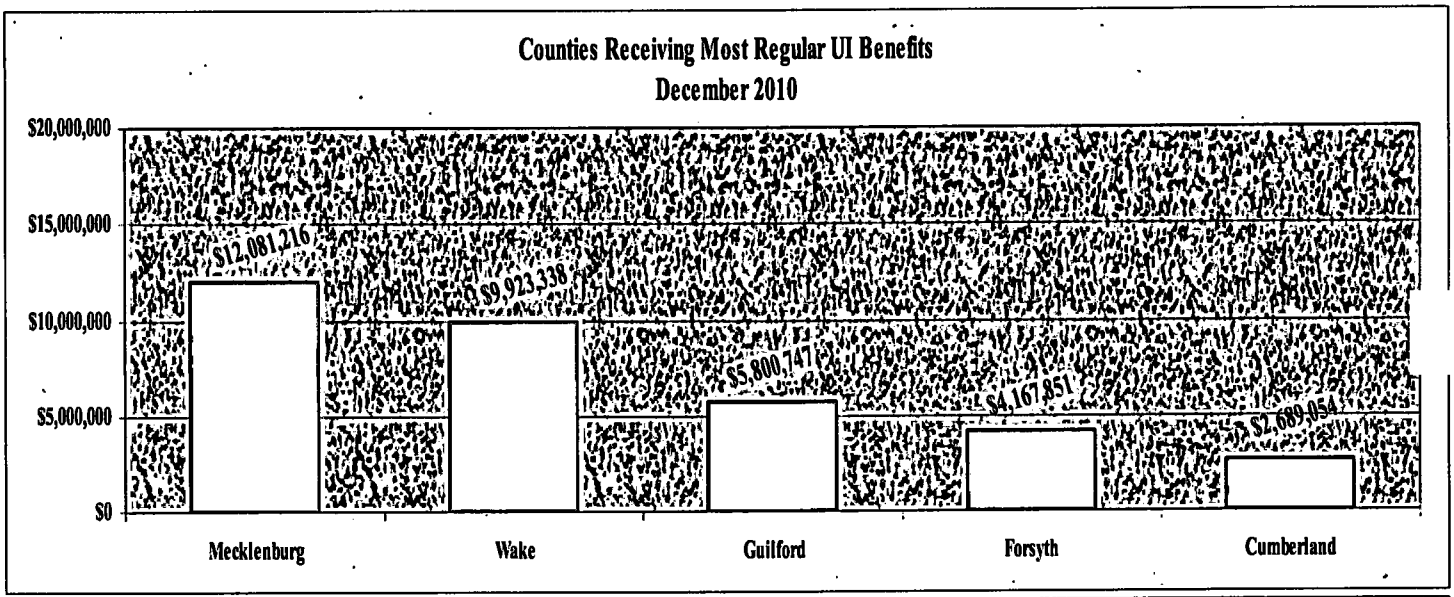
In December 2010, there were 83,358 Regular Unemployment Insurance (UI) Initial Claims filed in North Carolina. Counties with the largest number of claims filed and benefits received are shown in the graphs.

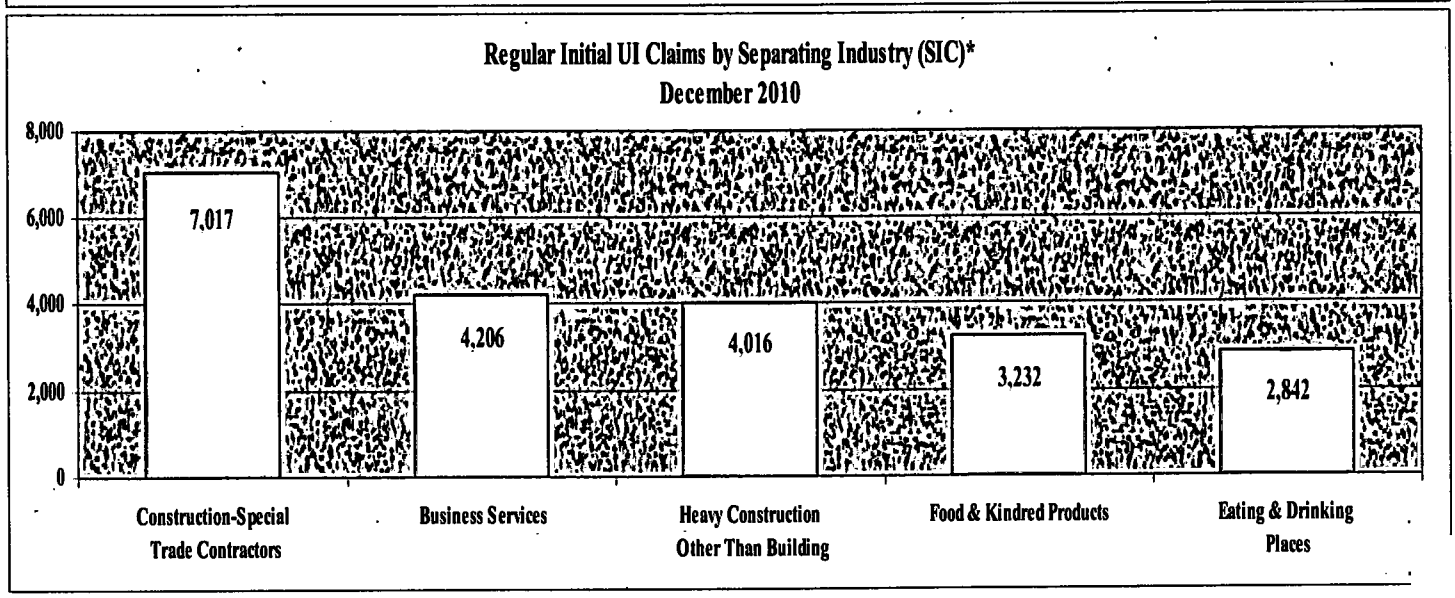
Total Regular Initial Claims are based on the number of transactions; demographic data are counts of individuals. Not all race/ethnicity and age breakouts are presented, but are available upon request.

Regular Initial UI Claims, December 2010

	Transactions		Individuals			
County	Initial Claims	Attached To Payroll	Female	African-American	White	45 O Older
Mecklenburg	4,976	1,464	1,935	2,150	1,690	1,736
Guilford	4,508	2,638	1,601	2,086	1,436	1,769
Wake	4,117	1,697	1,507	1,569	1,554	1,494
Catawba	2,648	2,040	813	229	1,781	1,163
Forsyth	2,533	1,224	886	874	1,043	900

New Regular Initial Claims, totaling 47,056 for the month ending December 2010, increased 5,598 from the prior month. Thirty-six percent were Attached New Initial Claims. During the same period a year ago, New Claims totaled 54,989, of which 37 percent were Attached. For the month ending December 2008, New Claims totaled 86,024, of which 47 percent were Attached Claims.





**Many Initial Claims were nonclassifiable by separating industry.*

Note: Initial Claims refer to regular UI Program.

Asheville Metro	**Over-the-Month Employment Change**	**(-500)**	**-0.3%**	**Over-the-Year Employment Change**	**(2,100)**	**1.3%**
	Industry	**Change**		**Industry**	**Change**	
	Mining, Logging & Construction	-300	-3.9%	Mining, Logging & Construction	-500	-6.4%
	Manufacturing	0	0.0%	Manufacturing	-400	-2.2%
Total	Trade, Transp. & Utilities	400	1.3%	Trade, Transp. & Utilities	600	1.9%
Nonfarm	Information	0	0.0%	Information	100	5.0%
Employment	Financial Activities	0	0.0%	Financial Activities	100	1.8%
Dec-10	Professional & Business Services	-300	-2.2%	Professional & Business Services	-400	-2.9%
	Education & Health Services	0	0.0%	Education & Health Services	600	2.0%
167,800	Leisure & Hospitality	100	0.4%	Leisure & Hospitality	1,100	5.0%
	Other Services	0	0.0%	Other Services	-100	-1.4%
Rate = 7.9	Government	-400	-1.4%	Government	1,000	3.6%
Burlington Metro	**Over-the-Month Employment Change**	**(-200)**	**-0.4%**	**Over-the-Year Employment Change**	**(300)**	**0.5%**
	Industry	**Change**		**Industry**	**Change**	
	Mining, Logging & Construction	0	0.0%	Mining, Logging & Construction	-100	-4.0%
	Manufacturing	0	0.0%	Manufacturing	-200	-2.4%
Total	Trade, Transp. & Utilities	100	0.9%	Trade, Transp. & Utilities	0	0.0%
Nonfarm	Information	0	0.0%	Information	0	0.0%
Employment	Financial Activities	0	0.0%	Financial Activities	0	0.0%
Dec-10	Professional & Business Services	0	0.0%	Professional & Business Services	300	4.8%
	Education & Health Services	0	0.0%	Education & Health Services	300	3.0%
56,100	Leisure & Hospitality	-100	-1.6%	Leisure & Hospitality	-100	-1.6%
	Other Services	0	0.0%	Other Services	0	0.0%
Rate = 10.1	Government	-200	-2.6%	Government	100	1.3%
harlotte/ astonia/ Rock Hill Metro	**Over-the-Month Employment Change**	**(-200)**	**0.0%**	**Over-the-Year Employment Change**	**(5,400)**	**0.7%**
	Industry	**Change**		**Industry**	**Change**	
	Mining, Logging & Construction	-800	-2.4%	Mining, Logging & Construction	-4,900	-13.0%
	Manufacturing	100	0.1%	Manufacturing	1,900	2.9%
	Trade, Transp. & Utilities	1,000	0.6%	Trade, Transp. & Utilities	-2,600	-1.5%
Total	Information	100	0.5%	Information	700	3.3%
Nonfarm	Financial Activities	100	0.1%	Financial Activities	600	0.9%
Employment	Professional & Business Services	-100	-0.1%	Professional & Business Services	8,500	6.8%
Dec-10	Education & Health Services	-200	-0.2%	Education & Health Services	-300	-0.4%
811,300	Leisure & Hospitality	0	0.0%	Leisure & Hospitality	400	0.5%
	Other Services	0	0.0%	Other Services	600	2.0%
Rate = 10.7	Government	-400	-0.3%	Government	500	0.4%
Durham/ Chapel Hill Metro	**Over-the-Month Employment Change**	**(-400)**	**-0.1%**	**Over-the-Year Employment Change**	**(3,100)**	**1.1%**
	Industry	**Change**		**Industry**	**Change**	
	Mining, Logging & Construction	-200	-2.8%	Mining, Logging & Construction	-700	-9.2%
	Manufacturing	200	0.6%	Manufacturing	200	0.6%
Total	Trade, Transp. & Utilities	300	0.9%	Trade, Transp. & Utilities	-100	-0.3%
Nonfarm	Information	0	0.0%	Information	0	0.0%
Employment	Financial Activities	100	0.8%	Financial Activities	-300	-2.3%
Dec-10	Professional & Business Services	-100	-0.3%	Professional & Business Services	-400	-1.2%
	Education & Health Services	100	0.2%	Education & Health Services	400	0.7%
287,400	Leisure & Hospitality	-100	-0.5%	Leisure & Hospitality	100	0.5%
	Other Services	0	0.0%	Other Services	-100	-0.5%
ate = 6.9	Government	-700	-1.1%	Government	4,000	6.7%

Note: All data are Not Seasonally Adjusted.
All December 2010 data are preliminary.

Fayetteville Metro	Over-the-Month Employment Change	(-300)	-0.2%	Over-the-Year Employment Change	(-800)	-0.6%
	Industry	Change		Industry	Chang	
	Mining, Logging & Construction	-100	-1.9%	Mining, Logging & Construction	-300	-5
	Manufacturing	0	0.0%	Manufacturing	0	0.0%
Total	Trade, Transp. & Utilities	-100	-0.5%	Trade, Transp. & Utilities	-200	-0.9%
Nonfarm	Information	0	0.0%	Information	0	0.0%
Employment	Financial Activities	0	0.0%	Financial Activities	0	0.0%
Dec-10	Professional & Business Services	0	0.0%	Professional & Business Services	500	3.8%
	Education & Health Services	0	0.0%	Education & Health Services	400	2.5%
129,700	Leisure & Hospitality	-200	-1.5%	Leisure & Hospitality	-200	-1.5%
	Other Services	0	0.0%	Other Services	-100	-2.0%
Rate = 9.0	Government	-100	-0.3%	Government	-1,300	-3.3%

Goldsboro Metro	Over-the-Month Employment Change	(-100)	-0.2%	Over-the-Year Employment Change	(800)	1.8%
	Industry	Change		Industry	Change	
	Mining. Logging & Construction	*		*Mining. Logging & Construction*	*	
	Manufacturing	*		*Manufacturing*	*	
Total	*Trade, Transp. & Utilities*	*		*Trade, Transp. & Utilities*	*	
Nonfarm	*Information*	*		*Information*	*	
Employment	*Financial Activities*	*		*Financial Activities*	*	
Dec-10	*Professional & Business Services*	*		*Professional & Business Services*	*	
	Education & Health Services	*		*Education & Health Services*	*	
44,200	*Leisure & Hospitality*	*		*Leisure & Hospitality*	*	
	Other Services	*		*Other Services*	*	
Rate = 8.2	Government	0	0.0%	Government	0	0.0%

Greensboro/ High Point Metro	Over-the-Month Employment Change	(-400)	-0.1%	Over-the-Year Employment Change	(-1,800)	-0.5
	Industry	Change		Industry	Chang	
	Mining, Logging & Construction	-300	-2.3%	Mining, Logging & Construction	-1,200	-8.6%
	Manufacturing	-100	-0.2%	Manufacturing	-1,500	-3.0%
Total	Trade, Transp. & Utilities	1,000	1.5%	Trade, Transp. & Utilities	100	0.1%
Nonfarm	Information	0	0.0%	Information	0	0.0%
Employment	Financial Activities	100	0.5%	Financial Activities	200	0.9%
Dec-10	Professional & Business Services	-200	-0.4%	Professional & Business Services	1,700	4.0%
	Education & Health Services	-100	-0.2%	Education & Health Services	-400	-0.9%
340,400	Leisure & Hospitality	-400	-1.4%	Leisure & Hospitality	-2,000	-6.6%
	Other Services	0	0.0%	Other Services	-100	-0.7%
Rate = 10.2	Government	-600	-1.2%	Government	1,400	2.9%

Greenville Metro	Over-the-Month Employment Change	(-200)	-0.3%	Over-the-Year Employment Change	(-1,000)	-1.3%
	Industry	Change		Industry	Change	
	Mining, Logging & Construction	0	0.0%	Mining, Logging & Construction	-200	-6.3%
	Manufacturing	0	0.0%	Manufacturing	0	0.0%
Total	Trade, Transp. & Utilities	100	0.9%	Trade, Transp. & Utilities	0	0.0%
Nonfarm	Information	0	0.0%	Information	100	11.1%
Employment	Financial Activities	0	0.0%	Financial Activities	0	0.0%
Dec-10	Professional & Business Services	0	0.0%	Professional & Business Services	300	5.4%
	Education & Health Services	0	0.0%	Education & Health Services	100	0.9%
74,300	Leisure & Hospitality	-100	-1.3%	Leisure & Hospitality	0	0.0%
	Other Services	0	0.0%	Other Services	-100	-3.
Rate = 9.5	Government	-200	-0.9%	Government	-1,200	-4.

*Survey sample size prohibits release.

Note: All data are Not Seasonally Adjusted.
All December 2010 data are preliminary.

Hickory/ Lenoir/ organton Metro	Over-the-Month Employment Change	(-200)	-0.1%	Over-the-Year Employment Change	(-1,800)	-1.3%
	Industry	Change		Industry	Change	
	Mining, Logging & Construction	-100	-2.6%	Mining, Logging & Construction	-200	-5.1%
	Manufacturing	100	0.3%	Manufacturing	-1,300	-3.5%
Total	Trade, Transp. & Utilities	300	1.1%	Trade, Transp. & Utilities	-400	-1.5%
Nonfarm	Information	0	0.0%	Information	0	0.0%
Employment	Financial Activities	0	0.0%	Financial Activities	100	3.0%
Dec-10	Professional & Business Services	0	0.0%	Professional & Business Services	300	3.0%
	Education & Health Services	0	0.0%	Education & Health Services	200	1.1%
140,900	Leisure & Hospitality	-200	-1.9%	Leisure & Hospitality	-200	-1.9%
	Other Services	0	0.0%	Other Services	0	0.0%
Rate = 12.4	Government	-300	-1.2%	Government	-300	-1.2%

Jacksonville Metro	Over-the-Month Employment Change	(-400)	-0.8%	Over-the-Year Employment Change	(-500)	-1.0%
	Industry	Change		Industry	Change	
	Mining. Logging & Construction	*		*Mining. Logging & Construction*	*	
	Manufacturing	*		*Manufacturing*	*	
Total	*Trade, Transp. & Utilities*	*		*Trade, Transp. & Utilities*	*	
Nonfarm	*Information*	*		*Information*	*	
Employment	*Financial Activities*	*		*Financial Activities*	*	
Dec-10	*Professional & Business Services*	*		*Professional & Business Services*	*	
	Education & Health Services	*		*Education & Health Services*	*	
48,000	*Leisure & Hospitality*	*		*Leisure & Hospitality*	*	
	Other Services	*		*Other Services*	*	
Rate = 7.8	Government	-100	-0.7%	Government	200	1.4%

Raleigh/ Cary Metro	Over-the-Month Employment Change	(-300)	-0.1%	Over-the-Year Employment Change	(200)	0.0%
	Industry	Change		Industry	Change	
	Mining, Logging & Construction	-800	-3.0%	Mining, Logging & Construction	-1,700	-6.1%
	Manufacturing	0	0.0%	Manufacturing	0	0.0%
Total	Trade, Transp. & Utilities	800	0.9%	Trade, Transp. & Utilities	-300	-0.3%
Nonfarm	Information	100	0.6%	Information	500	3.0%
Employment	Financial Activities	0	0.0%	Financial Activities	-100	-0.4%
Dec-10	Professional & Business Services	300	0.3%	Professional & Business Services	3,600	14.3%
	Education & Health Services	100	0.2%	Education & Health Services	500	0.8%
499,600	Leisure & Hospitality	200	0.4%	Leisure & Hospitality	-500	-1.0%
	Other Services	-600	-2.4%	Other Services	-600	-2.4%
Rate = 7.8	Government	-400	-0.4%	Government	-1,200	-1.3%

Rocky Mount Metro	Over-the-Month Employment Change	(-200)	-0.3%	Over-the-Year Employment Change	(300)	0.5%
	Industry	Change		Industry	Change	
	Mining, Logging & Construction	-100	-4.2%	Mining, Logging & Construction	-200	-8.0%
	Manufacturing	0	0.0%	Manufacturing	0	0.0%
Total	Trade, Transp. & Utilities	0	0.0%	Trade, Transp. & Utilities	-400	-3.3%
Nonfarm	*Information*	*		*Information*	*	
Employment	*Financial Activities*	*		*Financial Activities*	*	
Dec-10	Professional & Business Services	0	0.0%	Professional & Business Services	300	5.9%
	Education & Health Services	0	0.0%	Education & Health Services	100	1.4%
60,600	Leisure & Hospitality	-100	-2.1%	Leisure & Hospitality	-100	-2.1%
	Other Services	*		*Other Services*	*	
ate = 12.6	Government	-300	-2.5%	Government	-200	-1.7%

vey sample size prohibits release.

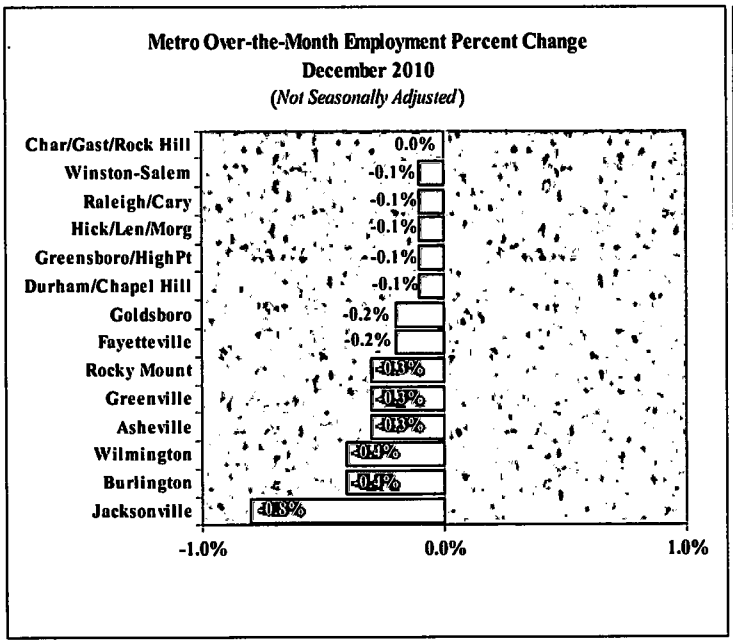
Note: All data are Not Seasonally Adjusted.
All December 2010 data are preliminary.

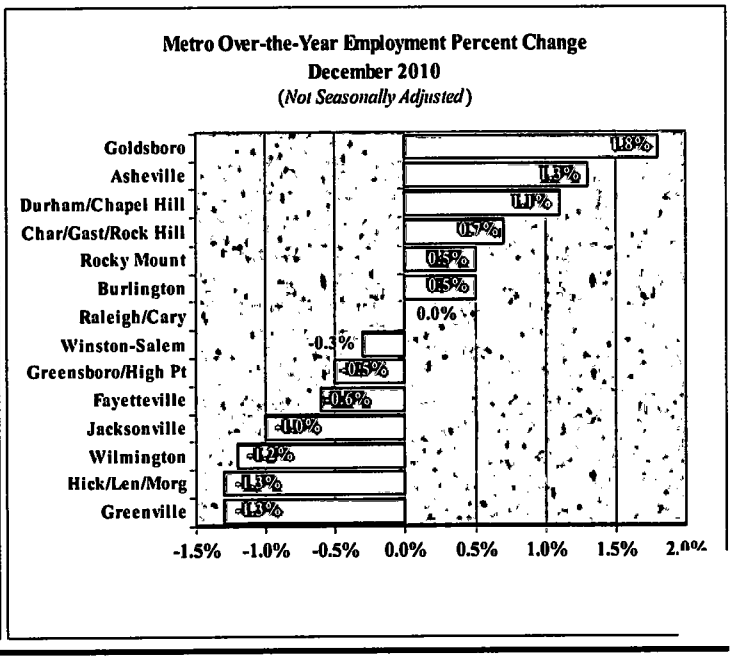
Wilmington Metro	**Over-the-Month Employment Change**	**(-600)**	**-0.4%**	**Over-the-Year Employment Change**	**(-1,600)**	**-1.2%**
	Industry		**Change**	**Industry**		**Chang**
	Mining, Logging & Construction	-200	-2.5%	Mining, Logging & Construction	-600	-7
	Manufacturing	0	0.0%	Manufacturing	0	0.0%
Total	Trade, Transp. & Utilities	100	0.4%	Trade, Transp. & Utilities	400	1.4%
Nonfarm	Information	100	3.1%	Information	100	3.1%
Employment	Financial Activities	0	0.0%	Financial Activities	0	0.0%
Dec-10	Professional & Business Services	100	0.8%	Professional & Business Services	-100	-0.7%
	Education & Health Services	0	0.0%	Education & Health Services	500	3.0%
135,600	Leisure & Hospitality	-700	-3.9%	Leisure & Hospitality	-1,400	-7.6%
	Other Services	0	0.0%	Other Services	0	0.0%
Rate = 9.9	Government	0	0.0%	Government	-500	-1.8%

Winston-Salem Metro	**Over-the-Month Employment Change**	**(-200)**	**-0.1%**	**Over-the-Year Employment Change**	**(-600)**	**-0.3%**
	Industry		**Change**	**Industry**		**Change**
	Mining, Logging & Construction	-200	-2.7%	Mining, Logging & Construction	-500	-6.5%
	Manufacturing	100	0.4%	Manufacturing	-400	-1.7%
Total	Trade, Transp. & Utilities	-100	-0.3%	Trade, Transp. & Utilities	-600	-1.6%
Nonfarm	Information	0	0.0%	Information	0	0.0%
Employment	Financial Activities	0	0.0%	Financial Activities	-100	-0.8%
Dec-10	Professional & Business Services	-200	-0.8%	Professional & Business Services	1,600	6.8%
	Education & Health Services	200	0.4%	Education & Health Services	1,300	2.9%
207,500	Leisure & Hospitality	0	0.0%	Leisure & Hospitality	300	1.5%
	Other Services	0	0.0%	Other Services	100	1.1%
Rate = 9.2	Government	0	0.0%	Government	-2,300	-8.3%

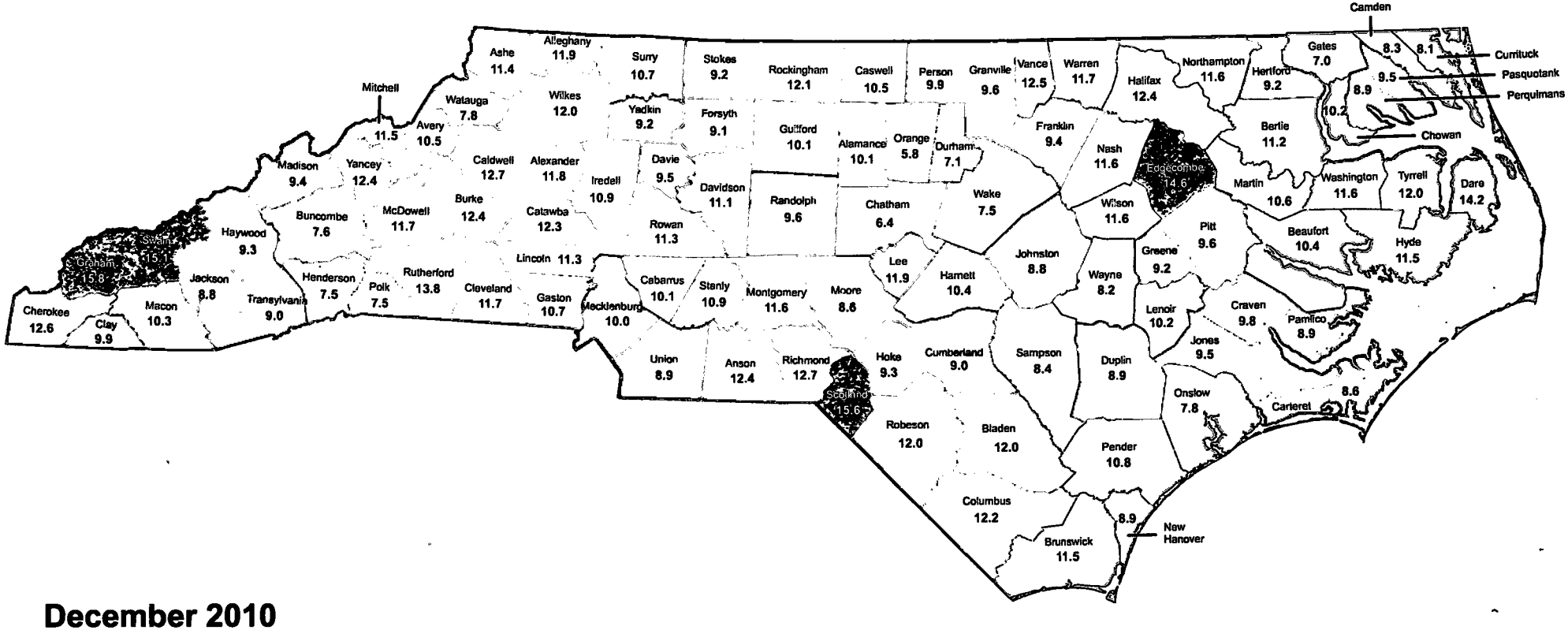
Note: All data are Not Seasonally Adjusted. All December 2010 data are preliminary.

Net industry employment decreased in all 14 Metros over the month. The Wilmington Metro had the largest net employment decrease with 600, followed by Asheville with 500, and Durham/Chapel Hill, Greensboro/High Point and Jacksonville each with 400. Jacksonville showed the greatest percentage decrease at 0.8 percent. Over the year, employment rose in seven Metros. The Charlotte/Gastonia/Rock Hill NC-SC Metro had the largest net employment increase with 5,400, followed by Durham with 3,100, and Asheville with 2,100. Goldsboro had the greatest percentage increase at 1.8 percent.





North Carolina Unemployment Rates by County
December 2010



December 2010

- 5.5% to 8.5%
- 8.6% to 10.0%
- 10.1% to 11.5%
- 11.6% to 14.5%
- 14.6% to 16.5%

▲ 27 Counties Higher Than Previous Month

▼ 66 Counties Lower Than Previous Month

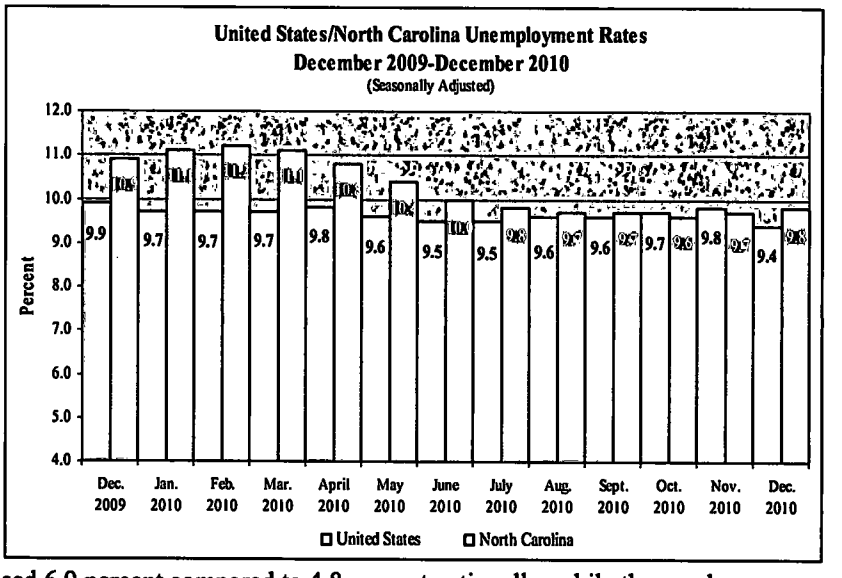
= 7 County Same as Previous Month

North Carolina Rate 9.7%
Not Seasonally Adjusted

Note: December 2010 data are preliminary.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1_2011

NORTH CAROLINA LABOR MARKET CONDITIONS
DECEMBER 2010*

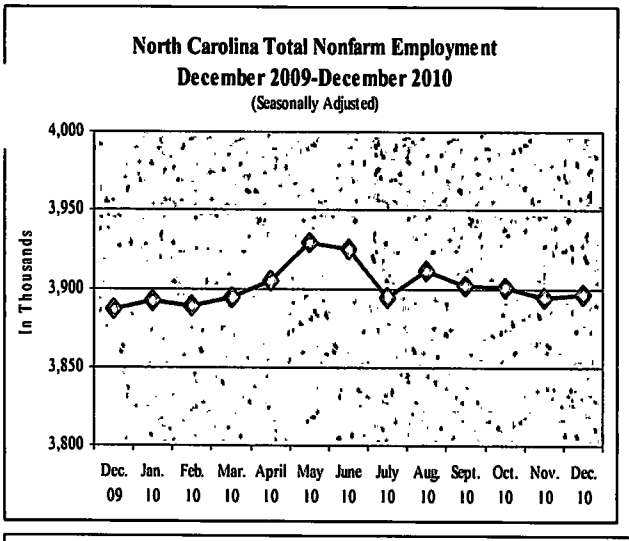
The North Carolina seasonally adjusted unemployment rate was 9.8 percent in December, an increase of 0.1 of a percentage point from a revised 9.7 percent in November, and 1.1 percentage points lower than December 2009. Over the month, the number of persons employed decreased 2,121 (0.1%), as those unemployed rose by 4,385 (1.0%). This resulted in an increase in the civilian labor force of 2,264 to 4,470,657.



Nationally, December's unemployment rate decreased 0.4 of a percentage point over the month to 9.4 percent. The number of persons employed increased by 297,000 (0.2%), while the civilian labor force decreased by 260,000 (0.2%).

Since the beginning of the recession in December 2007, North Carolina's labor force has decreased 1.8 percent, while the nation showed a loss of 0.1 percent. The number of people employed in North Carolina has decreased 6.9 percent compared to 4.8 percent nationally, while the number unemployed has increased 96.5 percent in North Carolina and 88.2 percent nationwide. The National Bureau of Economic Research officially declared the recession ended as of June 2009, making the duration of this recession 18 months.

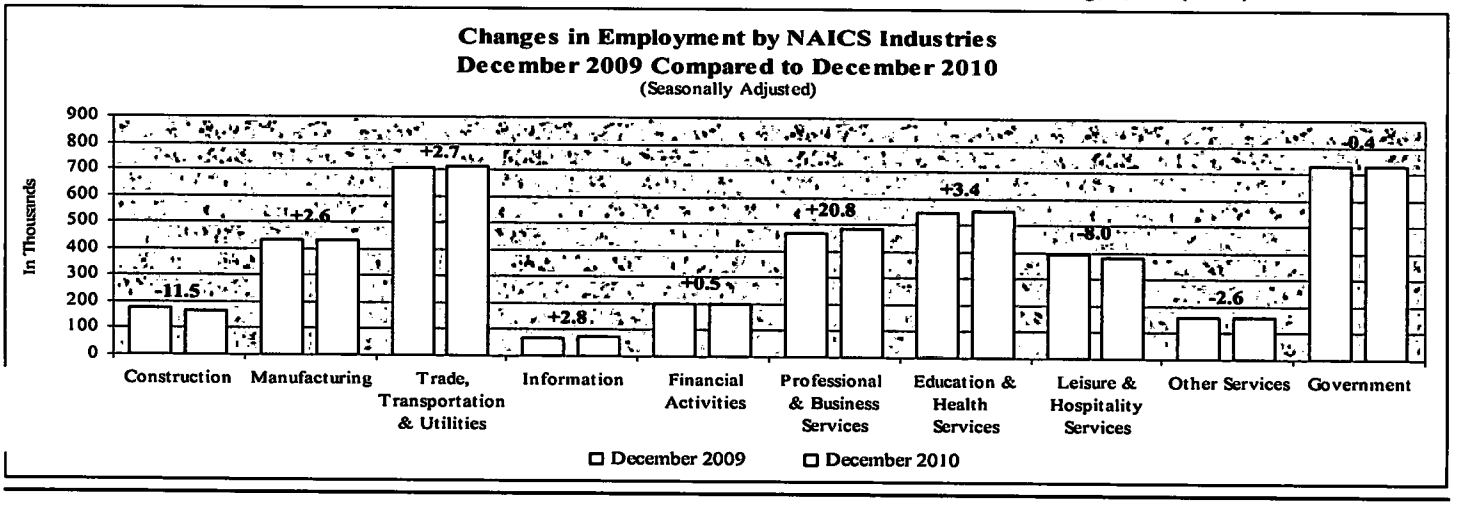
Seasonally adjusted Total Nonfarm industry employment, as gathered through the monthly establishment survey, showed an increase of 2,300 (0.1%) since November 2010, and an increase of 10,400 (0.3%) since December 2009.



Since the beginning of the December 2007 national recession, North Carolina has lost 272,800 (6.5%) Total Nonfarm jobs. Manufacturing employment declined by 98,000 (18.4%). Of those jobs, 62.0 percent were in Durable Goods and 38.0 percent in Nondurable Goods.

Of the major industries for which payroll data are seasonally adjusted, Professional & Business Services had the largest over-the-month gain in jobs (3,600; 0.7%), followed by Manufacturing (1,400; 0.3%), Trade, Transportation & Utilities (1,300; 0.2%), Education & Health Services (600; 0.1%) and Government (600; 0.1%). Construction (3,900; 2.3%) had the largest over-the-month decrease, followed by Leisure & Hospitality Services (2,300; 0.6%).

Since December 2009, Professional & Business Services added the largest number of jobs (20,800; 4.5%), followed by Education & Health Services, 3,400 (0.6%); Information, 2,800 (4.1%); Trade, Transportation & Utilities, 2,700 (0.4%); and Manufacturing, 2,600 (0.6%).



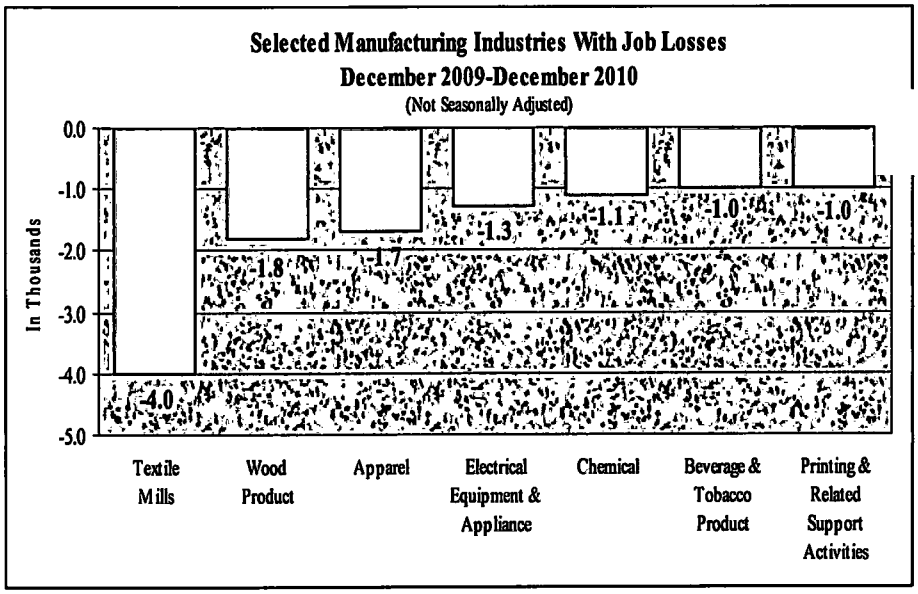
* NC current month data are preliminary, other 2010 data are revised, while 2009 data are benchmarked.

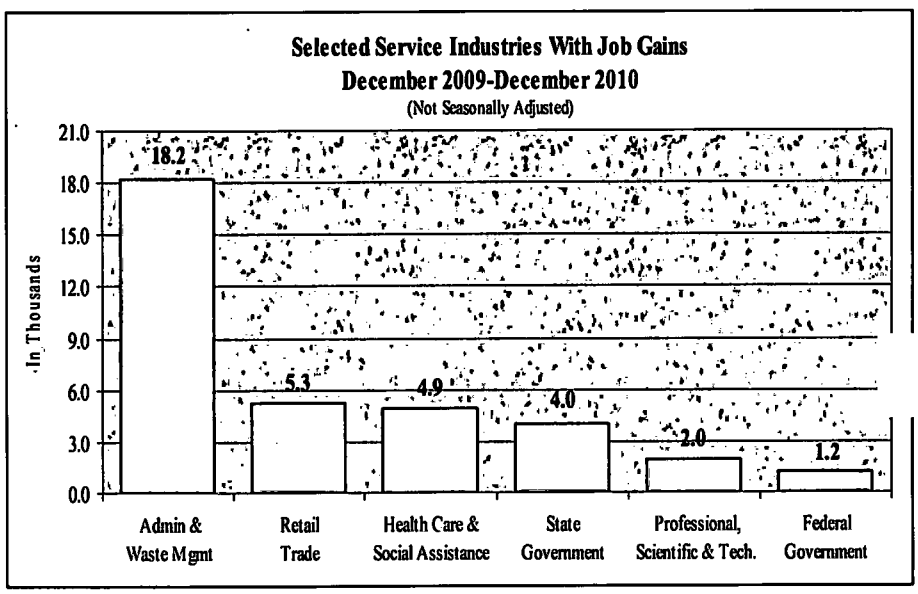
The December 2010 not seasonally adjusted Total Nonfarm employment level of 3,921,900 was 9,400 (0.2%) lower than November 2010. Among major industries in North Carolina, Trade, Transportation & Utilities had the largest over-the-month gain in employment at 5,400 (0.7%), followed by Manufacturing (1,500; 0.3%), and Financial Activities (900; 0.5%).

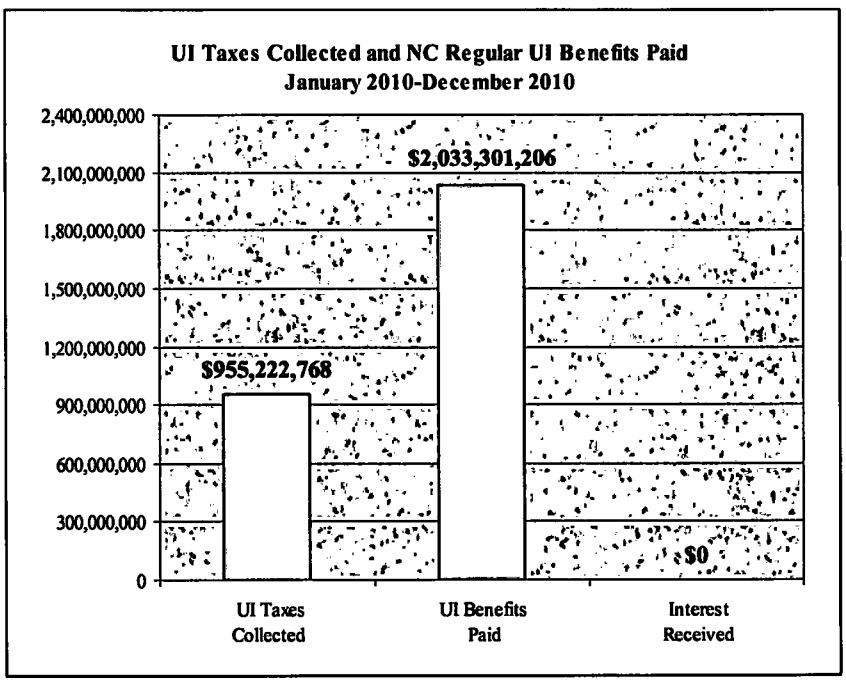
Over the year, the Service Providing sector (all industries except Mining & Logging, Construction, and Manufacturing) showed an increase of 19,800 (0.6%) jobs. Professional & Business Services experienced the largest employment increase with 20,700 (4.5%), followed by Education & Health Services (3,500; 0.6%), and Trade, Transportation & Utilities (3,000; 0.4%). Leisure & Hospitality experienced the largest employment decrease with 7,600 (2.0%), followed by Other Services (2,600; 1.6%), and Government (500; 0.1%).

The Goods Producing sector lost 8,600 (1.4%) jobs over the year. Gains were reported in both Manufacturing, 2,800 (0.6%), and Mining & Logging, 100 (1.7%). Construction decreased by 11,500 (6.5%) jobs.

Food had the largest amount of manufacturing employment (50,700) in December 2010, but was unchanged over the year. Textile Mills had the largest net over-the-year decrease at 4,000. Likewise, all other manufacturing industries experienced over-the-year declines except for Transportation Equipment (1,100; 4.5%), Machinery (400; 1.6%) and Fabricated Metal Product (200; 0.6%).





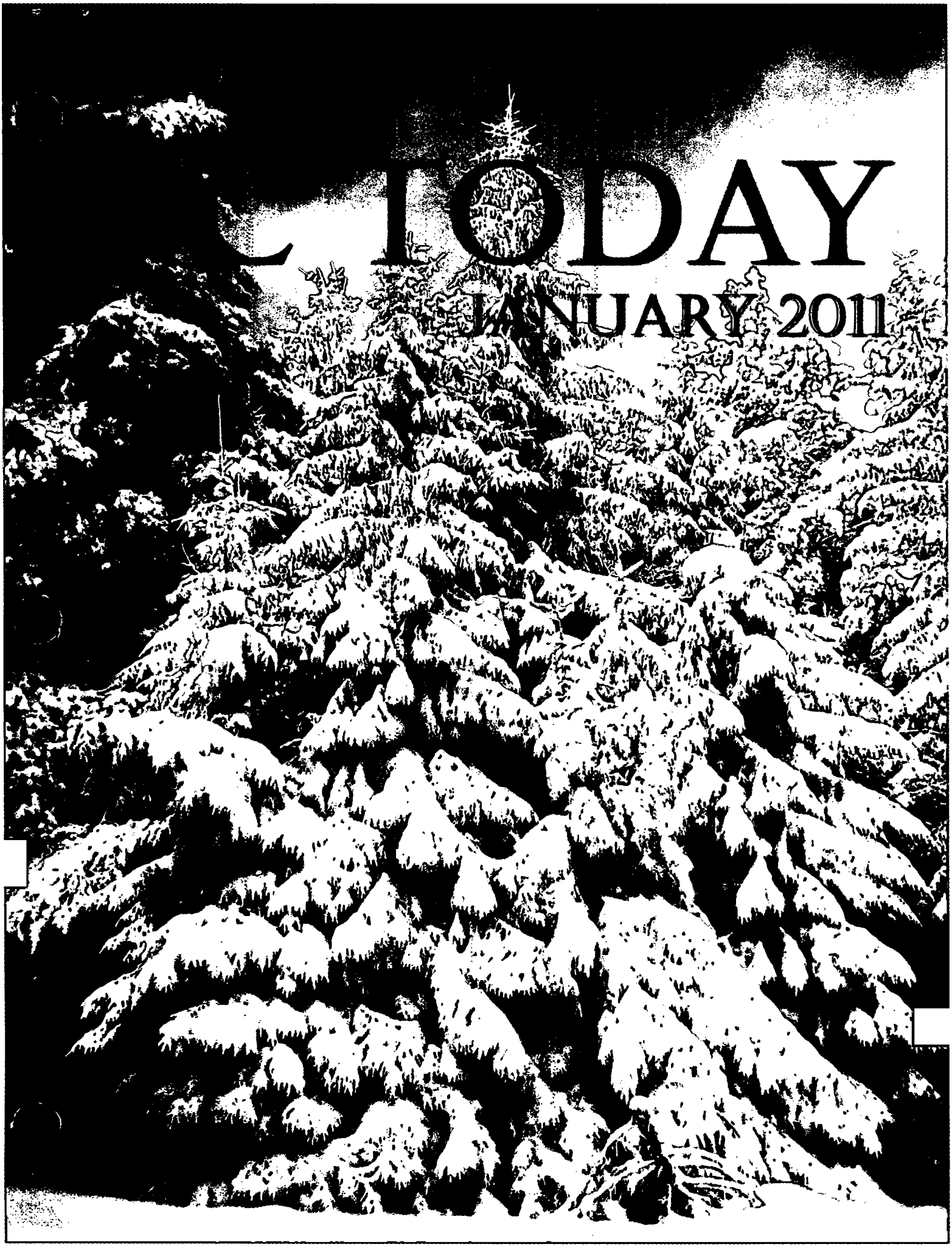


Average Weekly Hours for manufacturing production workers in December increased by 36 minutes to 41.4 from November's revised 40.8. Average Hourly Earnings rose by $0.10 to $15.87, while Average Weekly Earnings grew by $13.60 to $657.02.

Regular Initial Claims for Unemployment Insurance (UI) totaled 83,358 in December, increasing 11,481 from November. Fifty-seven percent of Initial Claims for December 2010 were "attached" to a payroll, meaning that employees expect to be recalled to their jobs.

A total of $121,612,191 in regular UI benefits was paid in December to 133,561 claimants statewide — an increase of 10,795 claimants since November 2010.

For the 12-month period ending December 2010, North Carolina paid $5,433,707,115 in total benefi The UI Trust Fund balance at the end of Decem was in the red ($2,504,280,159). The State Rese Fund balance was $89,221,519.


TODAY
JANUARY 2011

NORTH CAROLINA EMPLOYMENT AT A GLANCE

DECEMBER 2010

Civilian Labor Force

- North Carolina's **seasonally adjusted unemployment rate, at 9.8 percent,** increased 0.1 of a percentage point from the previous month. The rate was **10.9 percent** in **December 2009.**

- At 9.8 percent, North Carolina's **unemployment rate** is 0.4 of a percentage point higher than the **United States' 9.4 percent rate.**

- The number of **people employed decreased over the month by 0.1 percent to 4,031,490,** while the number of **people unemployed increased 1.0 percent to 439,167.**

- During December, **North Carolina's seasonally adjusted labor force participation rate was unchanged** over the month at **61.5 percent,** while the **U.S. rate decreased to 64.3 percent from 64.5 in November 2010**

Nonfarm Employment

- **Seasonally adjusted Total Nonfarm employment increased by 2,300 jobs over the month** to **3,896,700,** and **10,400 jobs over the year.**

- Over the month, **nine sectors experienced seasonally adjusted job growth: Professional & Business Services, 3,600; Manufacturing, 1,400; Trade, Transportation & Utilities, 1,300; Education & Health Services, 600; Government, 600; Financial Activities, 500; Information, 300; Mining & Logging, 100; and Other Services, 100.** Losses were reported for **Construction, 3,900; and Leisure & Hospitality Services, 2,300.**

- The major sectors to report over-the-year seasonally adjusted job increases were: **Professional & Business Services, 20,800; Education & Health Services, 3,400; Information, 2,800; Trade, Transportation & Utilities, 2,700; Manufacturing, 2,600; Financial Activities, 500; and Mining & Logging, 100.**

- Not seasonally adjusted, **seven major sectors** reported **over-the-year job increases: Professional & Business Services, 20,700; Education & Health Services, 3,500; Trade, Transportation & Utilities, 3,000; Information, 2,800; Manufacturing, 2,800; Financial Activities, 500; and Mining & Logging, 100.**

- In spite of an over-the-year job increase in Manufacturing, only **three major sectors showed increases: Transportation Equipment, 1,100; Machinery, 400; and Fabricated Metal Product, 200. Losses** were reported in **11 other sectors: Textile Mills, 4,000; Wood Product, 1,800; Apparel, 1,700; Electrical Equipment, Appliance & Component, 1,300; Chemical, 1,100; Beverage & Tobacco Product, 1,000; Printing & Related Support Activities, 1,000; Textile Product Mills, 700; Computer & Electronic Product, 500; Plastics & Rubber Products, 500;** and **Furniture & Related Product, 200. Food** was the only sector to report **no changes.**

- **Food remains** North Carolina's **leading sector** in manufacturing employment with **50,700. Chemical** follows with **39,700.**

Other Information

- **Revised Average Hourly Earnings** in North Carolina for manufacturing production workers **increased in December to $15.87,** and **Average Weekly Hours also rose to 41.4 or 36 minutes.**

- North Carolina paid **$361.5 million in Unemployment Insurance benefits (all programs)** to claimants in December. These payments include state and federally funded benefits.

- The number of **Initial Claims filed in North Carolina for Unemployment Insurance benefits increased in December to 83,358.** Approximately **$121.6 million was paid in regular UI benefits to 133,561 unemployed persons** across the state. **The average weekly benefit amount was $277.04,** which does not include the $25 Federal Additional Compensation (FAC) payment from The American Recovery and Reinvestment Act.

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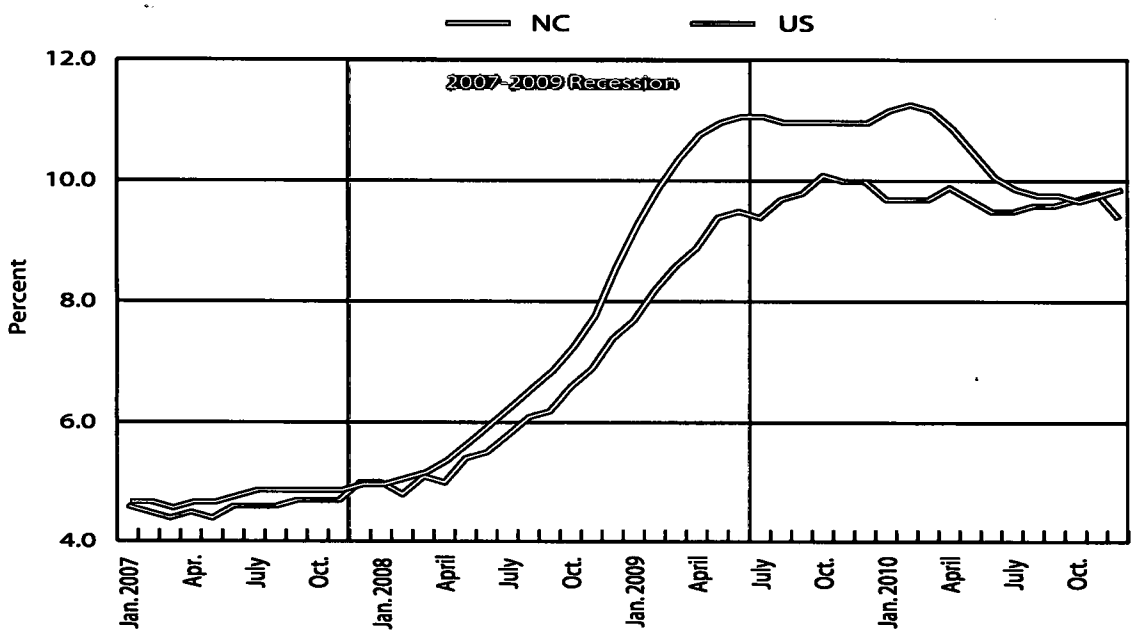
UNITED STATES/NORTH CAROLINA LABOR FORCE DATA
DECEMBER 2010

(Civilian Labor Force Estimates)	December[P] 2010	November[R] 2010	December[B] 2009	Month Ago		Year Ago	
				Numeric Change	Percent Change	Numeric Change	Percent Change
North Carolina							
Seasonally Adjusted							
Labor Force	4,470,657	4,468,393	4,523,283	2,264	0.1	-52,626	-1.2
Employed	4,031,490	4,033,611	4,029,075	-2,121	-0.1	2,415	0.1
Unemployed	439,167	434,782	494,208	4,385	1.0	-55,041	-11.1
Unemployment Rate	9.8	9.7	10.9	0.1	xxx	-1.1	xxx
Not Seasonally Adjusted							
Labor Force	4,440,663	4,470,596	4,488,354	-29,933	-0.7	-47,691	-1.1
Employed	4,010,124	4,025,809	3,997,906	-15,685	-0.4	12,218	0.3
Unemployed	430,539	444,787	490,448	-14,248	-3.2	-59,909	-12.2
Unemployment Rate	9.7	9.9	10.9	-0.2	xxx	-1.2	xxx
(Civilian Labor Force Estimates)	December 2010	November 2010	December 2009	Month Ago		Year Ago	
				Numeric Change	Percent Change	Numeric Change	Percent Change
United States							
Seasonally Adjusted							
Labor Force	153,690,000	153,950,000	153,172,000	-260,000	-0.2	518,000	0.3
Employed	139,206,000	138,909,000	137,960,000	297,000	0.2	1,246,000	0.9
Unemployed	14,485,000	15,041,000	15,212,000	-556,000	-3.7	-727,000	-4.8
Unemployment Rate	9.4	9.8	9.9	-0.4	xxx	-0.5	xxx
Not Seasonally Adjusted							
Labor Force	153,156,000	153,698,000	152,693,000	-542,000	-0.4	463,000	0.3
Employed	139,159,000	139,415,000	137,953,000	-256,000	-0.2	1,206,000	0.9
Unemployed	13,997,000	14,282,000	14,740,000	-285,000	-2.0	-743,000	-5.0
Unemployment Rate	9.1	9.3	9.7	-0.2	xxx	-0.6	xxx

Source: LAUS, LMI of ESC

[P] Preliminary; [R] Revised; [B] Benchmarked Note: May not sum due to rounding.

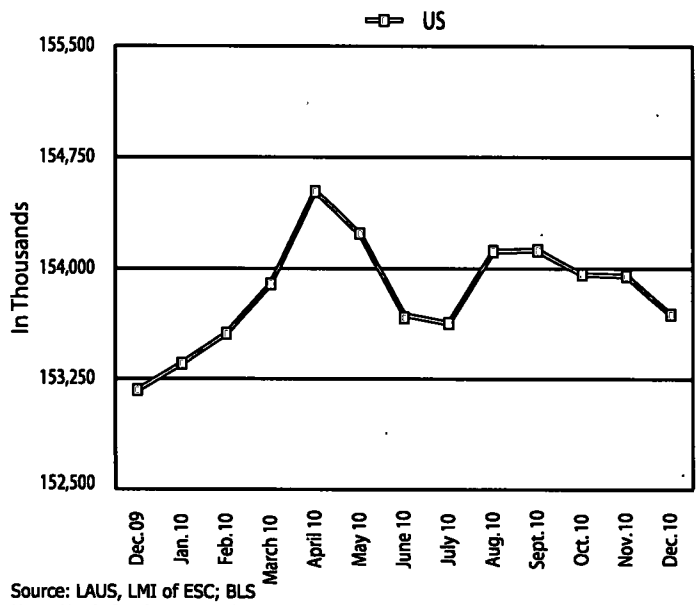
UNITED STATES/NORTH CAROLINA UNEMPLOYMENT RATES
JANUARY 2007-DECEMBER 2010
(SEASONALLY ADJUSTED)



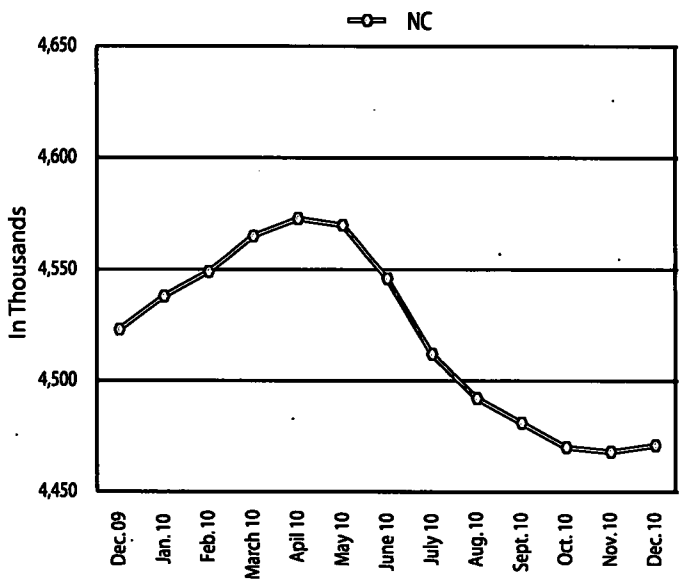
Source: LAUS, LMI of ESC; BLS
Note: North Carolina December 2010 data are preliminary, other 2010 data are revised, while all other data are benchmarked. Recession period documented in above graph represents December 2007-June 2009.

Seasonally adjusted, North Carolina's civilian labor force rose slightly over the month — the first increase since April of this year. As of the beginning of the last recession (December 2007), the civilian labor force was 4,551,900, 31,243 more than that in December 2010. Employment has shown gradual decreases since May of this year. However, compared to December 2009, the number employed is up a slight 0.1 percent. The number of people unemployed increased 1.0 percent over the month, but over the year has decreased 71,313 since a high in February 2010 when 510,480 people were unemployed. The December 2010 unemployment rate rose 0.1 of a percentage point to 9.8 percent.

UNITED STATES LABOR FORCE
DECEMBER 2009-DECEMBER 2010
(SEASONALLY ADJUSTED)

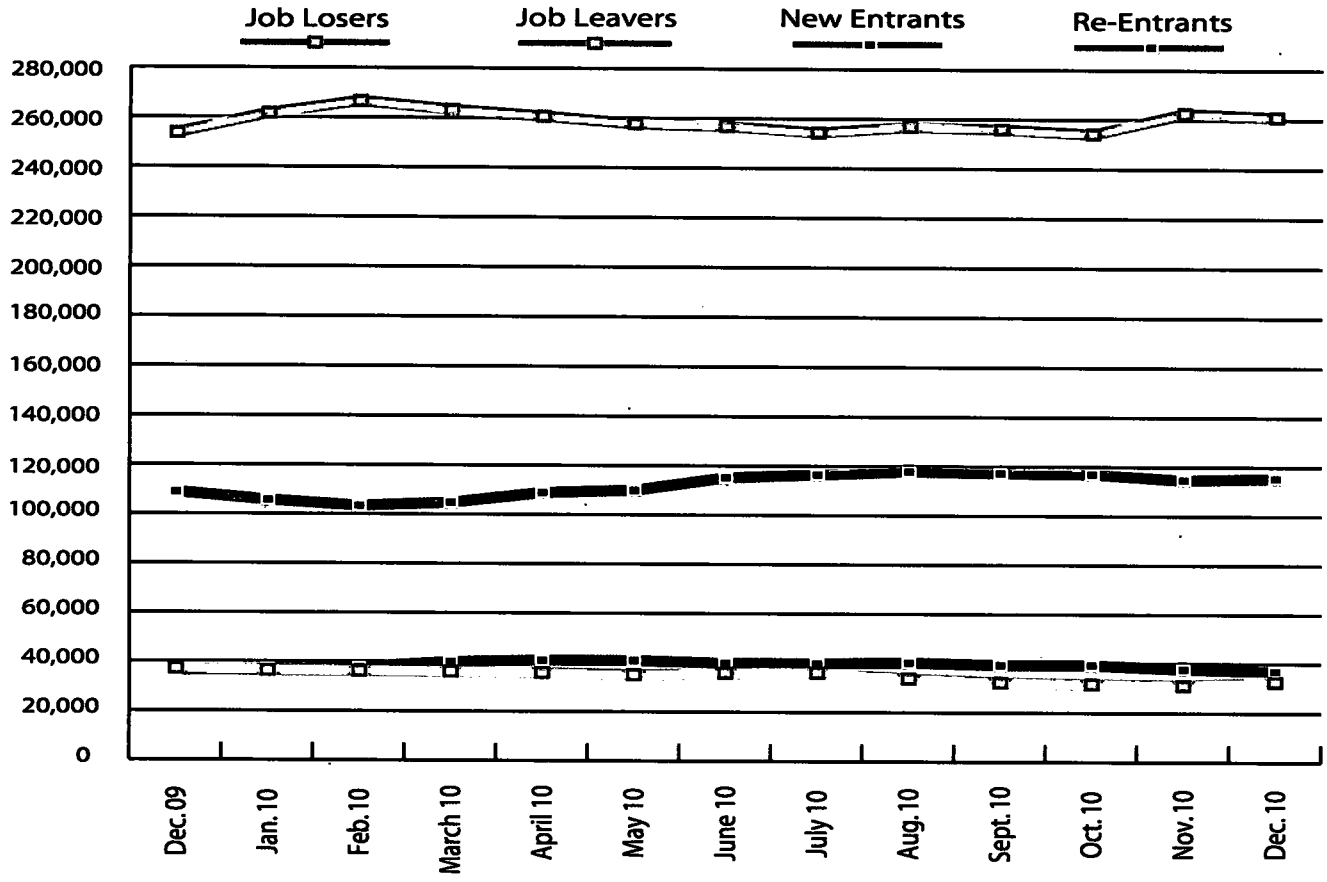


NORTH CAROLINA LABOR FORCE
DECEMBER 2009-DECEMBER 2010
(SEASONALLY ADJUSTED)



Source: LAUS, LMI of ESC; BLS
Note: North Carolina December 2010 data are preliminary, other 2010 data are revised, while 2009 data are benchmarked.

Number of North Carolina Unemployed by Reasons for Unemployment
December 2009-December 2010
(CPS 12-Month Moving Average)



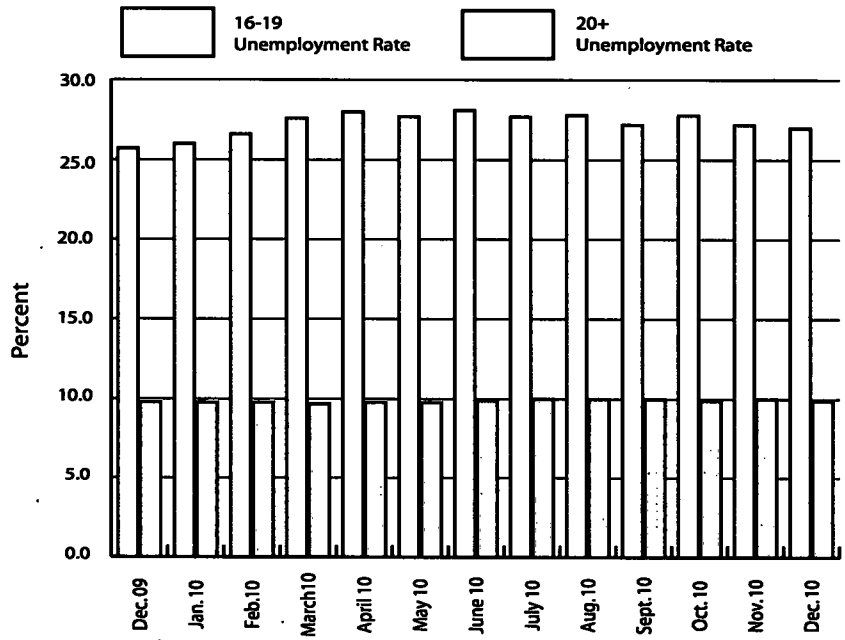
Source: LMI of ESC, extracted from the North Carolina Current Population Survey (CPS).
Note: Data are not seasonally adjusted and may not add due to rounding. Estimates are derived from a 12-month moving average of elements of North Carolina's portion of the CPS, a monthly survey performed by the US Census Bureau (Census) for the US Bureau of Labor Statistics (BLS) and encompassing approximately 1,500 rotating households within North Carolina. This data is provided to North Carolina by BLS, but is not comparable to and does not take the place of official BLS estimates published by the LMID.

The United States' seasonally adjusted labor force decreased slightly from November to December 2010. Over the year, the nation's labor force grew by 518,000, while the unemployment rate decreased 0.5 of a percentage point to 9.4 percent.

Using a 12-month moving average on not seasonally adjusted household data collected through the Current Population Survey (CPS), the percentage of job losers decreased 0.6 percent over the month, while job leavers increased 4.4 percent. Entrants — those entering the labor force for the first time or after an extended absence — declined 0.2 percent. Over the year, job losers increased 2.9 percent, job leavers decreased 12.3 percent, and entrants increased 4.8 percent.

According to the same data source, the labor force for 16-to-19-year-olds decreased 2.3 percent from November. Those persons employed and unemployed fell 2.0 percent and 2.9 percent, respectively. The labor force and employment for those 20-years old and older remained relatively unchanged, while those unemployed decreased 0.6 percent. Over the year, 16-to-19-year-olds had significant losses in the labor force (19.5%), employment (21.0%) and unemployment (15.2%). However, those 20-years old and older had increases in the labor force (1.1%), employment (0.9%) and unemployment (2.3%).

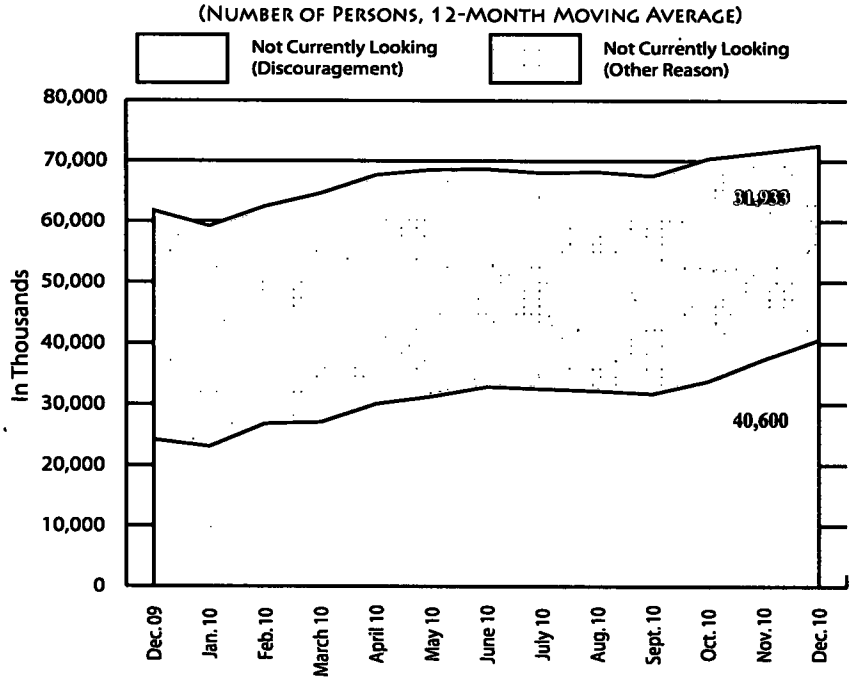
North Carolina Unemployment Rate by Age Group*
December 2009-December 2010
(12-Month Moving Average)



Source: LMI of ESC, extracted from the North Carolina Current Population Survey (CPS).

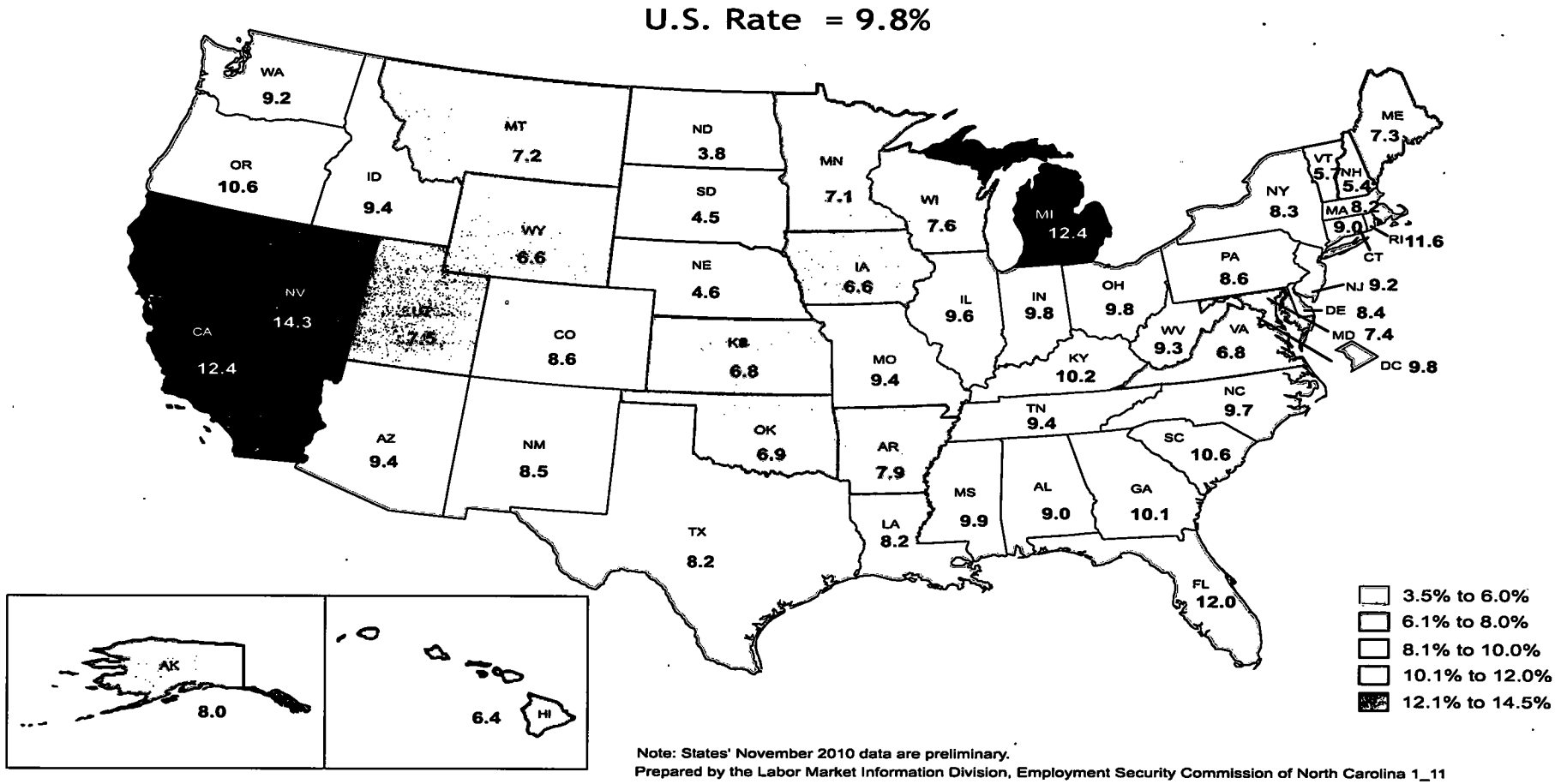
Per the CPS data, North Carolinians not in the labor force rose 0.5 percent since November. The percentage of individuals wanting to work increased 0.3 percent. Those not seeking work due to discouragement increased 8.8 percent, while those not currently looking for work due to other reasons decreased 6.3 percent. Compared to a year ago, the number of North Carolinians that were not in the labor force increased 3.0 percent and those who wanted a job rose 10.8 percent. The individuals who were not looking for work due to discouragement increased 67.6 percent, and those who are not currently looking for work due to other reasons decreased 14.9 percent.

Not in the North Carolina Labor Force Due to Discouragement or Other Reasons*
December 2009-December 2010
(Number of Persons, 12-Month Moving Average)



Source: LMI of ESC, extracted from the North Carolina Current Population Survey (CPS).
*Note: Data are not seasonally adjusted and may not add due to rounding. Estimates are derived from a 12-month moving average of elements of the CPS, a monthly survey performed by the US Census Bureau (Census) for the US Bureau of Labor Statistics (BLS) and encompassing approximately 1,500 rotating households within North Carolina. Data are provided to North Carolina by the BLS, but is not comparable to and does not take the place of official BLS estimates published by the LMID.

Unemployment Rates By State, Seasonally Adjusted November 2010

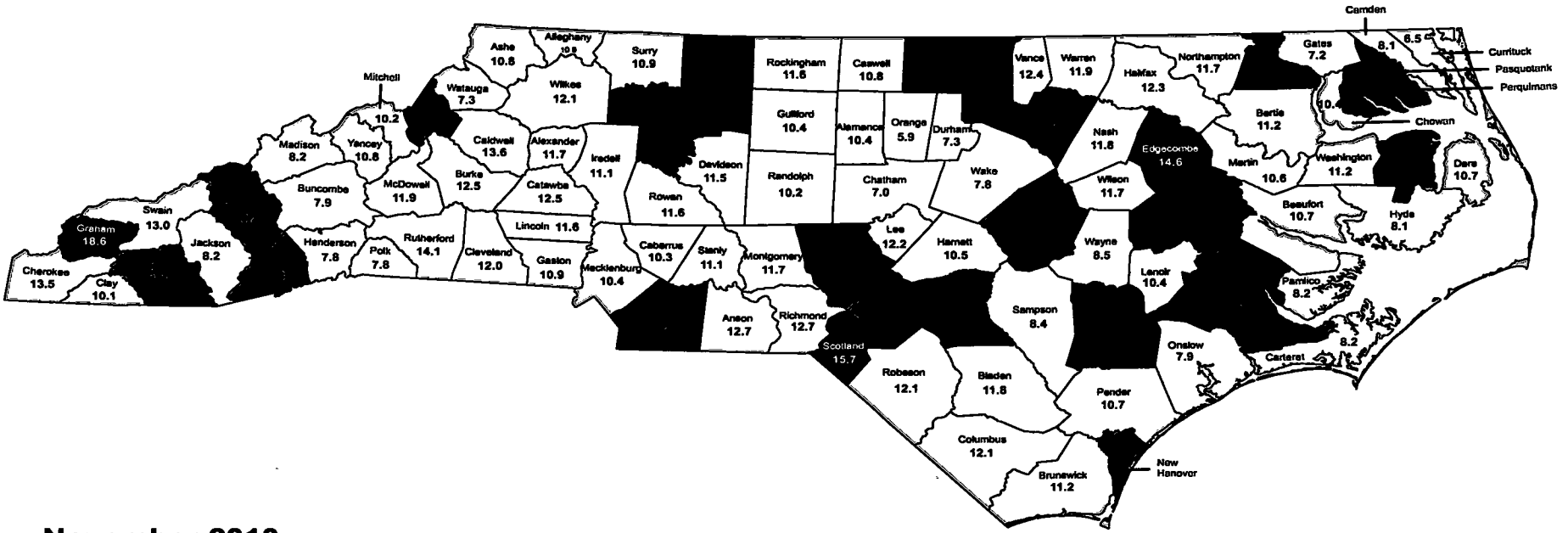


Note: States' November 2010 data are preliminary.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1_11

During November 2010, 21 states and the District of Columbia recorded increases in their unemployment rates, 15 registered rate decreases, and 14 reported no rate change, according to the U.S. Bureau of Labor Statistics. Nevada continues to record the highest unemployment rate (14.3%), followed by California and Michigan (12.4% each) and Florida (12.0%). North Dakota had the lowest unemployment rate, 3.8 percent, followed by South Dakota and Nebraska, 4.5 percent and 4.6 percent, respectively.

Of our neighboring states, November unemployment rates remained the same in Tennessee (9.4%) and Virginia (6.8%). South Carolina's unemployment rate declined 0.1 of a percentage point to 10.6 percent, while Georgia's unemployment rate rose 0.3 of a percentage point to 10.1 percent.

North Carolina Unemployment Rates by County
November 2010



November 2010

- 5.5% to 8.5%
- 8.6% to 10.0%
- 10.1% to 11.5%
- 11.6% to 14.5%
- 14.6% to 18.6%

▲ 99 Counties Higher Than Previous Month

▼ 0 Counties Lower Than Previous Month

= 1 County Same as Previous Month

North Carolina Rate 9.9%
Not Seasonally Adjusted

Note: November 2010 data are preliminary.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 01_2011

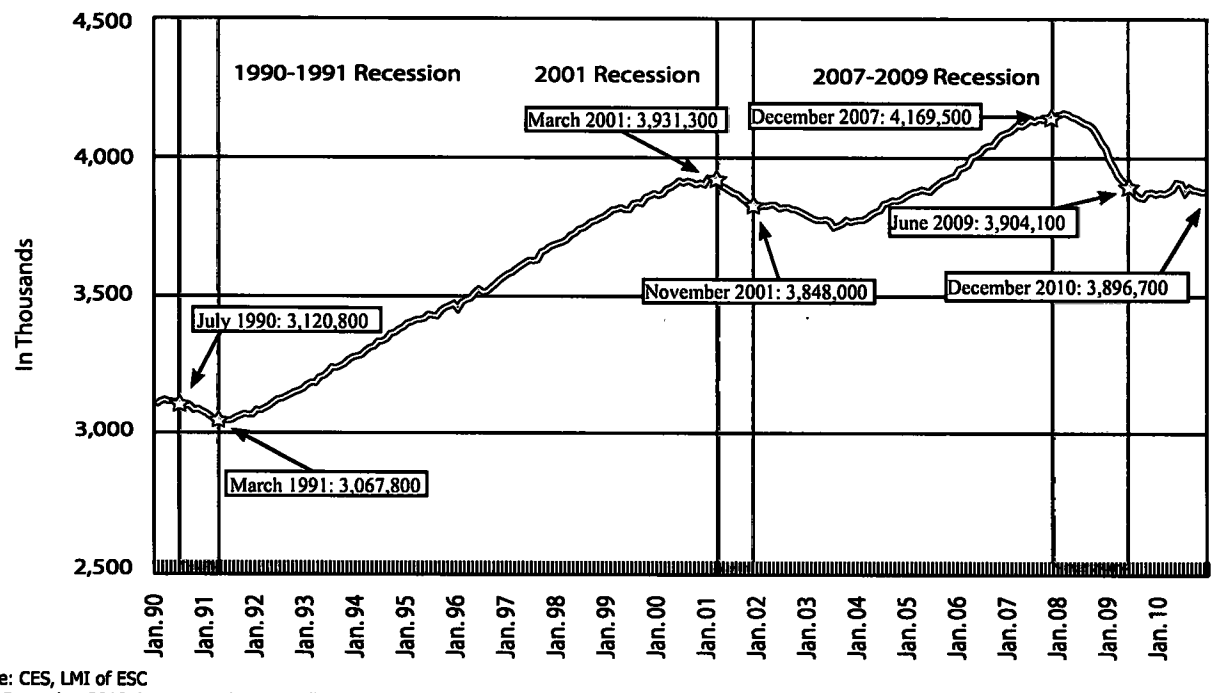
In North Carolina, not seasonally adjusted unemployment rates rose in 99 counties and remained unchanged in Davie County from October to November 2010. Graham County had the highest unemployment rate at 18.6 percent, while Orange County had the lowest at 5.9 percent. All 14 Metropolitan Statistical Areas (MSAs) experienced rate increases. The Wilmington MSA had the greatest percentage-point increase — 0.9 of a percentage point — to record an unemployment rate of 9.9 percent. Rocky Mount had the highest unemployment rate of 12.8 percent, followed by Hickory-Lenoir-Morganton (12.6%). The Durham-Chapel Hill MSA had the lowest unemployment rate at 7.1 percent.

North Carolina Industry Employment Statewide
December 2010
(Seasonally Adjusted, in Thousands)

NAICS Industry	Total Employment			Net & Percent Change			
	December[P] 2010	November[R] 2010	December[B] 2009	From November 2010		From December 2009	
				Net	Percent	Net	Percent
Total Nonfarm	**3,896.7**	**3,894.4**	**3,886.3**	**2.3**	**0.1%**	**10.4**	**0.3%**
Mining & Logging	**6.1**	**6.0**	**6.0**	**0.1**	**1.7%**	**0.1**	**1.7%**
Construction	**166.4**	**170.3**	**177.9**	**-3.9**	**-2.3%**	**-11.5**	**-6.5%**
Manufacturing	**434.4**	**433.0**	**431.8**	**1.4**	**0.3%**	**2.6**	**0.6%**
Durable Goods	225.6	225.2	221.0	0.4	0.2%	4.6	2.1%
Nondurable Goods	208.8	207.8	210.8	1.0	0.5%	-2.0	-0.9%
Trade, Transp. & Utilities	**710.5**	**709.2**	**707.8**	**1.3**	**0.2%**	**2.7**	**0.4%**
Wholesale Trade	162.5	161.5	162.9	1.0	0.6%	-0.4	-0.2%
Retail Trade	436.4	435.8	431.3	0.6	0.1%	5.1	1.2%
Transportation, Warehousing & Utilities	111.6	111.9	113.6	-0.3	-0.3%	-2.0	-1.8%
Information	**71.4**	**71.1**	**68.6**	**0.3**	**0.4%**	**2.8**	**4.1%**
Financial Activities	**200.0**	**199.5**	**199.5**	**0.5**	**0.3%**	**0.5**	**0.3%**
Finance & Insurance	149.6	149.6	149.6	0.0	0.0%	0.0	0.0%
Real Estate, Rental & Leasing	50.4	49.9	49.9	0.5	1.0%	0.5	1.0%
Professional & Business Services	**485.2**	**481.6**	**464.4**	**3.6**	**0.7%**	**20.8**	**4.5%**
Professional, Scientific & Technical Services	174.6	172.3	172.5	2.3	1.3%	2.1	1.2%
Mgmt. of Companies & Enterprises	73.1	73.1	72.6	0.0	0.0%	0.5	0.7%
Admin. & Support & Waste Mgmt.	237.5	236.2	219.3	1.3	0.6%	18.2	8.3%
Education & Health Services	**551.2**	**550.6**	**547.8**	**0.6**	**0.1%**	**3.4**	**0.6%**
Educational Services	81.5	82.0	83.0	-0.5	-0.6%	-1.5	-1.8%
Health Care & Social Assistance	469.7	468.6	464.8	1.1	0.2%	4.9	1.1%
Leisure & Hospitality Services	**384.4**	**386.7**	**392.4**	**-2.3**	**-0.6%**	**-8.0**	**-2.0%**
Arts, Entertainment & Recreation	49.6	49.8	54.2	-0.2	-0.4%	-4.6	-8.5%
Accommodation & Food Services	334.8	336.9	338.2	-2.1	-0.6%	-3.4	-1.0%
Other Services	**159.2**	**159.1**	**161.8**	**0.1**	**0.1%**	**-2.6**	**-1.6%**
Government	**727.9**	**727.3**	**728.3**	**0.6**	**0.1%**	**-0.4**	**-0.1%**
Federal	68.0	67.7	66.8	0.3	0.4%	1.2	1.8%
State	205.3	205.3	201.4	0.0	0.0%	3.9	1.9%
Local	454.6	454.3	460.1	0.3	0.1%	-5.5	-1.2%

Source: CES, LMI of ESC
[P] Preliminary; [R] Revised; [B] Benchmarked

NORTH CAROLINA TOTAL NONFARM EMPLOYMENT
JANUARY 1990-DECEMBER 2010
(SEASONALLY ADJUSTED)



Source: CES, LMI of ESC
Note: December 2010 data are preliminary, all other 2010 data are revised, while previous years' data are benchmarked. Recession periods documented in above graph represent the dates July 1990-March 1991, March 2001-November 2001, and December 2007-June 2009.

Seasonally adjusted Total Nonfarm employment in North Carolina gained 2,300 (0.1%) jobs over the month and 10,400 (0.3%) jobs over the year. The United States added 103,000 (0.1%) Total Nonfarm jobs over the month and 1,124,000 (0.9%) over the year.

Among North Carolina's industries, Professional & Business Services had the largest net (3,600) over-the-month increase. Construction (3,900) had the largest net over-the-month decrease.

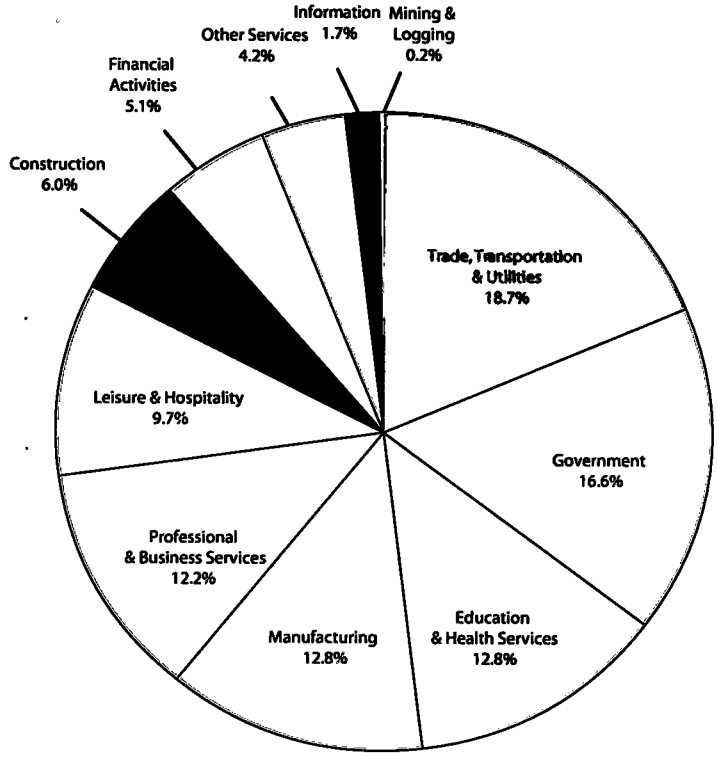
The Service Providing sector, which includes all industries except Mining & Logging, Construction, and Manufacturing, increased by 19,200 jobs over the year. The Goods Producing sector dropped 8,800 jobs.

Since the end of the 2007 national recession (June 2009), North Carolina has lost 7,400 (0.2%) Total Nonfarm jobs. Nationally, Total Nonfarm employment increased 0.1 percent since June 2009.

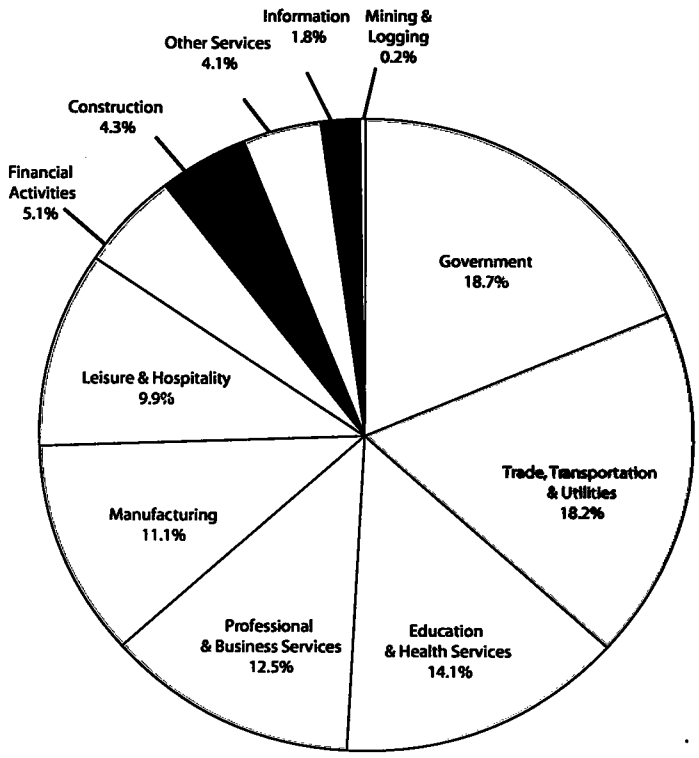
Industries with job gains since June 2009 are:
- Professional & Business Services, 27,400 (6.0%)
- Government, 16,500 (2.3%)
- Education & Health Services, 9,200 (1.7%)
- Information, 1,700 (2.4%)
- Mining & Logging, 100 (1.7%)

Industries with job losses since June 2009 are:
- Construction, 25,300 (13.2%)
- Manufacturing, 11,000 (2.5%)
- Trade, Transportation & Utilities, 10,300 (1.4%)
- Leisure & Hospitality, 9,100 (2.3%)
- Other Services, 5,700 (3.5%)
- Financial Activities, 900 (0.4%)

North Carolina Industrial Composition
December 2007 Compared to December 2010
(Seasonally Adjusted)



2007
Total Nonfarm: 4,169,500



2010
Total Nonfarm: 3,896,700

Source: CES, LMI of ESC
Note: 2010 data are preliminary, while 2007 data are benchmarked. Percentages may not sum due to rounding.

Since the beginning of the 2007-2009 recession, North Carolina has lost 272,800 (6.5%) jobs. The Goods Producing industries (Mining & Logging, Construction, and Manufacturing) have declined 23.3 percent over the period. The Goods Producing Industries comprised 19 percent of North Carolina's Total Nonfarm employment in December 2007. That ratio is now 15.6 percent.

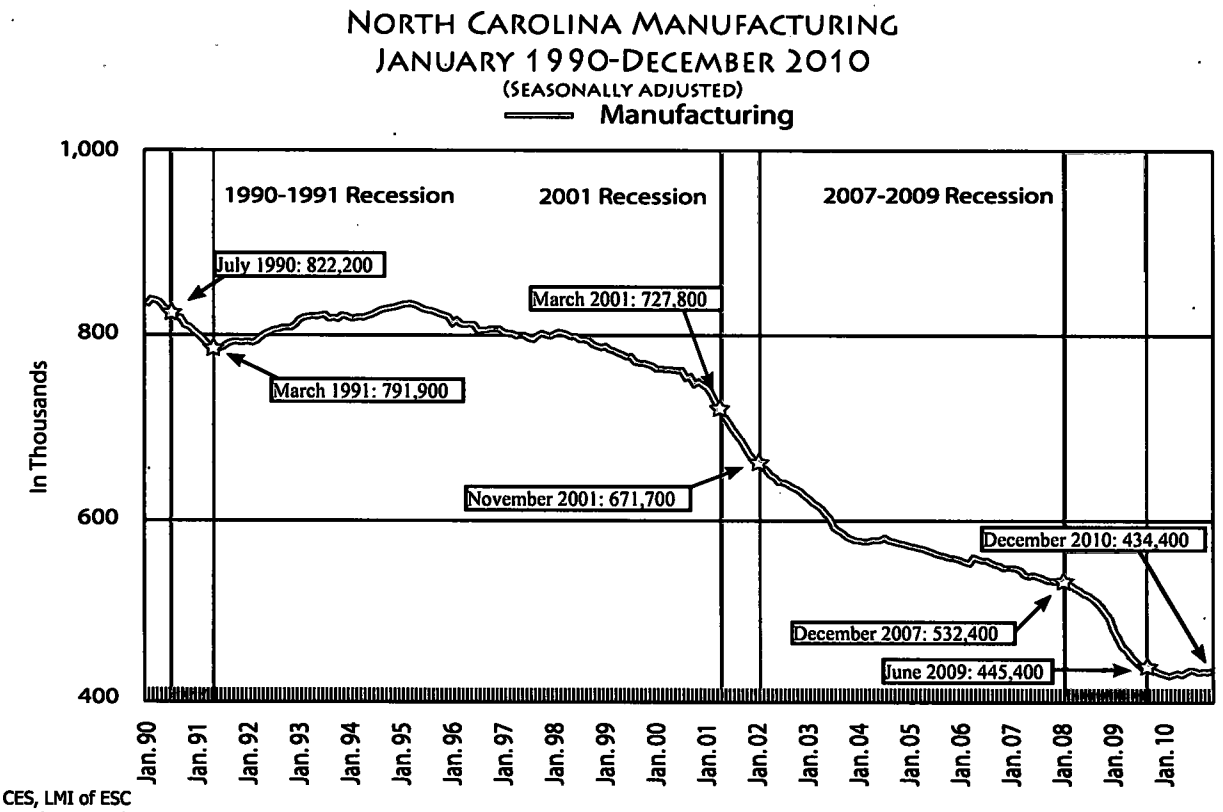
Over the three-year period (December 2007-December 2010), only two industry sectors have shown job growth — Government added 33,900 jobs (4.9%), and Education & Health, 18,400 (3.5%). Overall, Government has grown from 16.6 percent of North Carolina's Total Nonfarm employment in December 2007 to 18.7 percent in December 2010. Education & Health comprised 12.8 percent of Total Nonfarm employment in December 2007. Today, that ratio has grown to 14.1 percent.

In December 2007, Manufacturing comprised 12.8 percent of industry employment compared to 11.1 percent in December 2010. Construction has dropped from 6.0 percent in 2007 to 4.3 percent in December 2010.

Having lost 69,600 jobs in three years, Trade, Transportation & Utilities' employment to NC Total Nonfarm employment decreased 0.5 of a percentage point over the three-year period.

Professional & Business Services gained 20,800 jobs between December 2009 and December 2010. In December 2010, this sector comprised 12.5 percent of Total Nonfarm employment compared to 12.2 percent in December 2007. Leisure & Hospitality represents 9.9 percent of Total Nonfarm employment — up from 9.7 percent in December 2007.

Mining & Logging, Information, Financial Activities, and Other Services lost an accumulated total of 30,100 jobs since December 2007. However, each sector's ratio of industry employment to Total Nonfarm has changed only slightly during the three-year period.



Source: CES, LMI of ESC
Note: December 2010 data are preliminary, all other 2010 data are revised, while previous years' data are benchmarked. Recession periods documented in above graph represent the dates July 1990-March 1991, March 2001-November 2001, and December 2007-June 2009.

Since the end of the 2007 national recession (June 2009), North Carolina has lost 11,000 (2.5%) manufacturing jobs. Of those, 36.4 percent were in Durable Goods and 63.6 percent in Nondurable Goods.

The United States has lost 1.0 percent of its manufacturing jobs since June 2009 — 25.0 percent in Durable Goods and 75.0 percent, Nondurable Goods.

Not seasonally adjusted, Food was the industry with the largest number of manufacturing jobs (50,700) in North Carolina in December 2010, followed by Chemical Manufacturing (39,700).

The 11 net over-the-year manufacturing declines were:

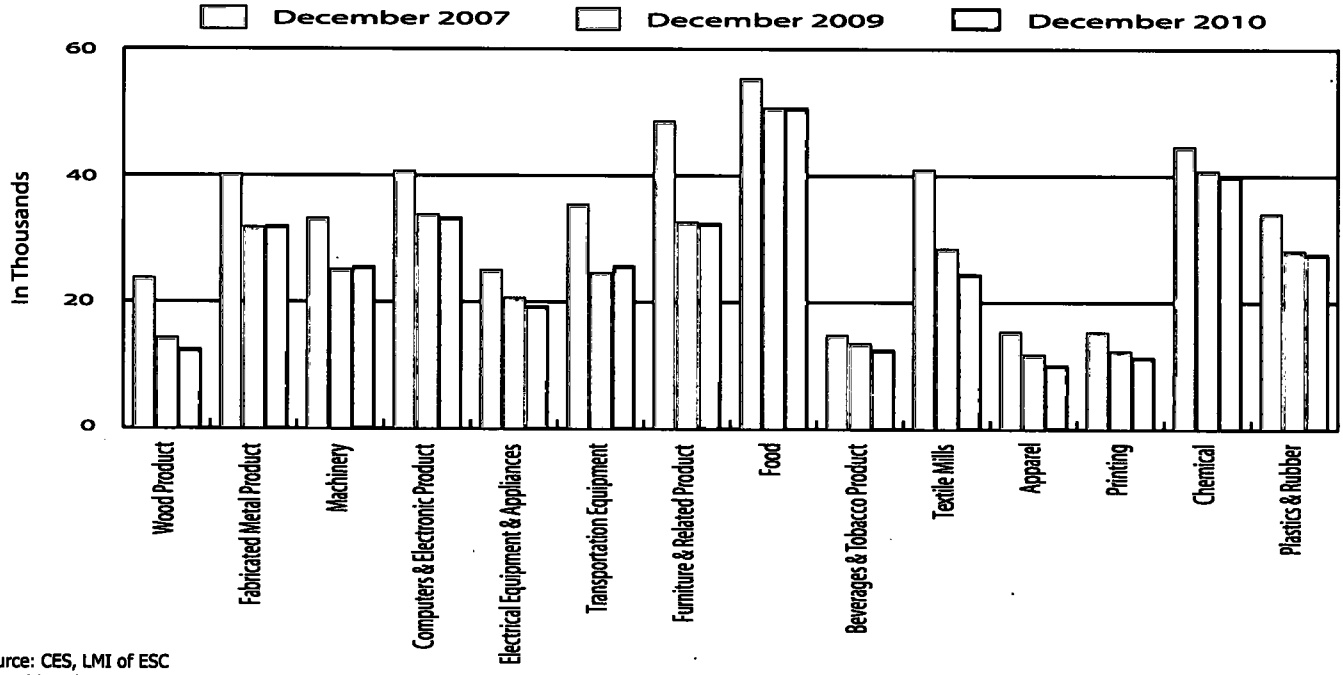
- Textile Mills, 4,000 (14.0%)
- Wood Product, 1,800 (12.5%)
- Apparel, 1,700 (14.3%)
- Electrical Equipment, Appliance & Component, 1,300 (6.3%)
- Chemical, 1,100 (2.7%)
- Printing & Related Support Activities, 1,000 (8.1%)
- Beverage & Tobacco Product, 1,000 (7.4%)
- Textile Product Mills, 700 (10.3%)
- Plastics & Rubber Products, 500 (1.8%)
- Computer & Electronic Product, 500 (1.5%)
- Furniture & Related Product, 200 (0.6%)

The three net over-the-year manufacturing increases were:

- Transportation Equipment, 1,100 (4.5%)
- Machinery, 400 (1.6%)
- Fabricated Metal Product, 200 (0.6%)

Employment Change in North Carolina Manufacturing Industries
Comparison of December 2007, December 2009 & December 2010

(Not Seasonally Adjusted)



Source: CES, LMI of ESC
Note: 2010 data are preliminary, while 2007 & 2009 data are benchmarked.

Manufacturing Production Hours and Earnings
December 2009-December 2010

(Not Seasonally Adjusted)

	Average Weekly Hours	Average Hourly Earnings	Average Weekly Earnings
December 2010	**41.4**	**$15.87**	**$657.02**
November	40.8	$15.77	$643.42
October	41.1	$15.73	$646.50
September	40.5	$15.65	$633.83
August	40.4	$15.61	$630.64
July	39.7	$15.98	$634.41
June	40.5	$15.88	$643.14
May	40.7	$15.82	$643.87
April	40.3	$16.03	$646.01
March	40.0	$15.94	$637.60
February	39.6	$16.00	$633.60
January 2010	**40.0**	**$16.00**	**$640.00**
December 2009	**40.1**	**$15.88**	**$636.79**

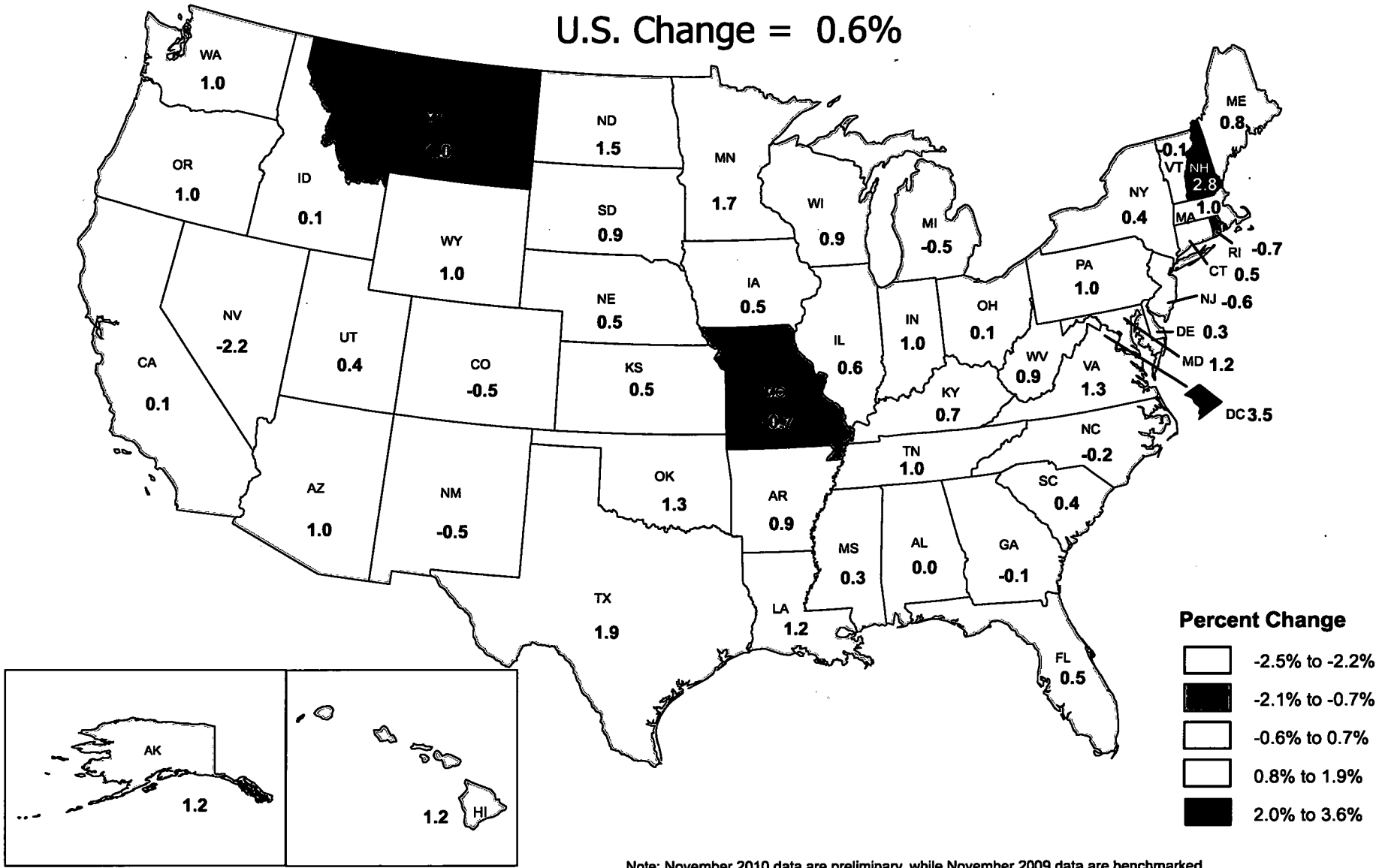
Source: CES, LMI of ESC Note: December 2010 data are preliminary, all other data are revised. Data are not adjusted for inflation, or seasonality and refer to production workers only. Manufacturing Hours and Earnings are based on gross payrolls and corresponding paid hours and include overtime, shift premiums, vacation and holiday pay, and other leave payments made directly by the employer to employees for the pay period reported. The data excludes bonuses, commissions and lump-sum payments unless earned and paid regularly during each pay period. Hours relate to the hours for which pay was received and does include overtime.

Over the month, Manufacturing Production Workers' Average Hourly Earnings rose $0.10. Average Weekly Earnings increased $13.60 and Average Weekly Hours grew 0.6 (36 minutes).

Durable Goods' Average Hourly Earnings increased $0.05 over the month. Average Weekly Earnings rose $20.45, and Average Weekly Hours gained 1.1 (66 minutes).

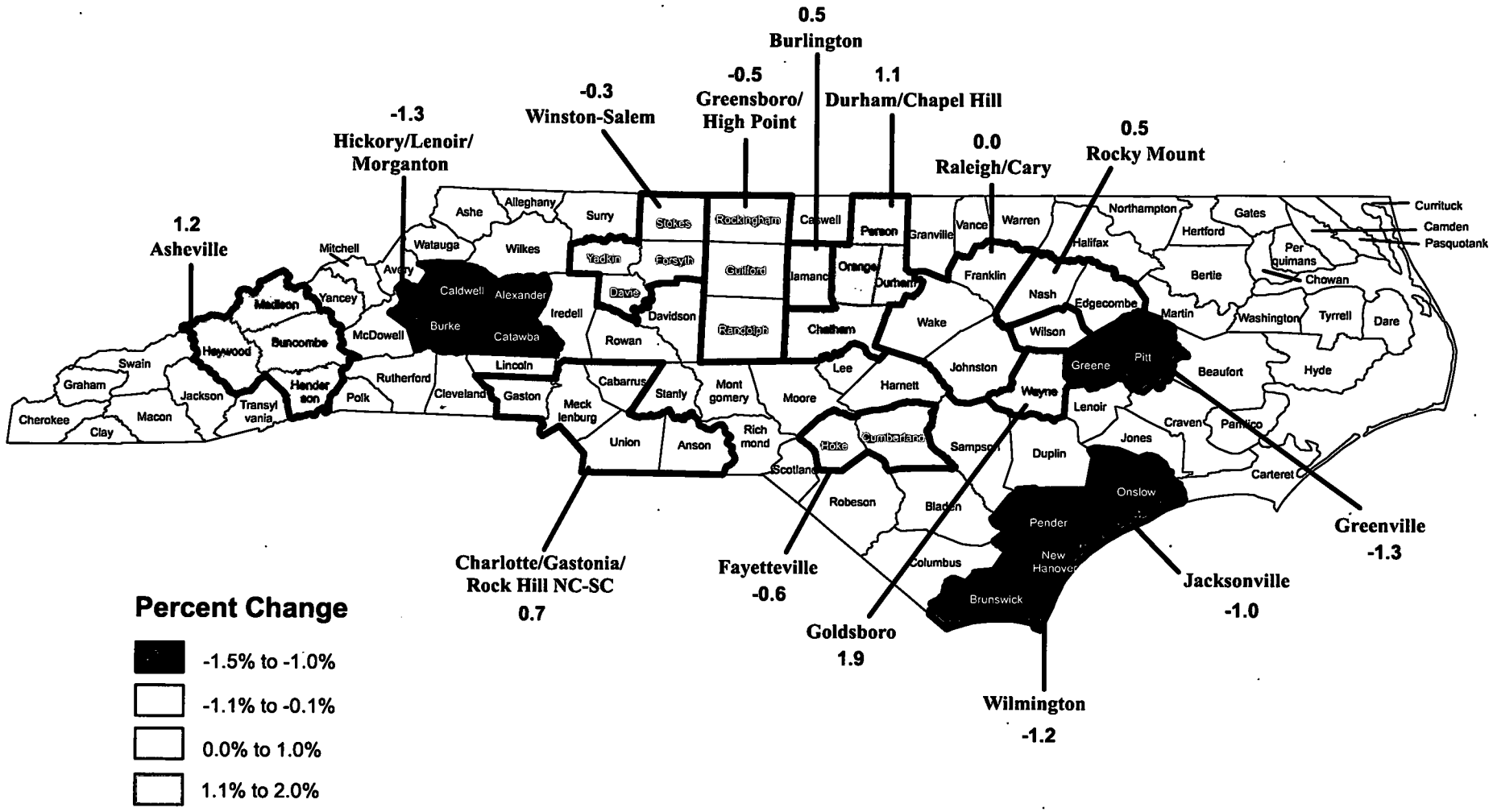
Over the month, Nondurable Goods' Average Hourly Earnings increased $0.12. Average Weekly Earnings rose $6.42, and Average Weekly Hours grew 0.1 (6 minutes).

Total Nonfarm Employment Percent Change By State, Seasonally Adjusted, November 2009-November 2010



Note: November 2010 data are preliminary, while November 2009 data are benchmarked.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1-11

Percent Change in Total Nonfarm Employment by Metro Seasonally Adjusted, December 2009-December 2010



Note: December 2009 data are benchmarked, while December 2010 data are preliminary.
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 1_2011

Announced Business Closings and Permanent Layoffs[1] December 2010

County	Company	Product	Individuals Affected*	Reason	Closing/Layoff
Alamance					
	Edna Group (Quizno's)	Restaurant	10	Bankruptcy	Closing
Brunswick					
	Lin Creech Sample Group	Binding	11	Bankruptcy	Closing
	Captain John's	Restaurant	40	Fire	Closing
Buncombe					
	Alliance-Carolina Tool & Mold Corp.	Injection Molding	75	Lost Contract	Closing
	Mountain 1st Bank	Bank	8	Competition	Closing
Cabarrus					
	Richard Petty Motorsports/GEMS	Racing Team	75	Business Sold	Closing
Catawba					
	Anderson Brothers Electrical Co. Inc.	Electrical Contractor	8	Bankruptcy	Closing
	JE's Honda Motorcycles	Motorcycle Dealer	6	Economic Conditions	Closing
	Lineberger's Cattle Company	Restaurant	47	Fire	Closing
	Exodus Homes	Housing Charity	4	Cost Cuts	Layoff
Forsyth					
	Club Odysey	Nightclub	8	Not Stated	Closing
Guilford					
	Shugart Enterprises LLC	Design Center	42	Relocation/Winston-Salem	Closing
	Southern Food Group LLC	Food Wholesale	179	Bankruptcy	Closing
	If It's Paper (Battleground Ave.)	Paper Products	4	Not Stated	Closing
Harnett					
	Tarheel Sand & Landscape	Landscaping	4	Bankruptcy	Closing
Henderson					
	Mountain 1st Bank	Bank	8	Cost Cuts	Layoff
Mecklenburg					
	Midtown Sundries/Harborside	Restaurant	75	Financial Difficulty	Closing
	O'Charley's Inc.	Restaurant	58	Underperformance	Closing
	ZipRealty Inc.	Real Estate Agency	42	Restructuring	Closing
	Fed Ex National LTL	Not Stated	42	Not Stated	Closing
	HMS Host	Not Stated	96	Not Stated	Closing
New Hanover					
	Mike Walton Electric	Electrical Contractor	7	Bankruptcy	Closing
	O'Charley's Inc.	Restaurant	55	Underperformance	Closing
Orange					
	Tek-Wall	Exterior Contractor	4	Bankruptcy	Closing
	VisArt Video	Video Store	10	Not Stated	Closing
Pender					
	Coty Inc.	Distribution Center	100	Relocation/Ohio	Closing
	Coty Inc.	Cosmetics Manufacturing	330	Shuttering	Closing
Person					
	Force Protection	Security Assembly Plant	11	Lost Contract	Layoff
Rockingham					
	Southern Finishing Co. Inc.	Cabinetry	95	Relocation/Virginia	Closing
	Pizza Station	Restaurant	16	Not Stated	Closing
Rowan					
	PGT Industries Inc.	Windows Manufacturing	468	Relocating to Florida	Closing
Rutherford					
	Mountain 1st Bank	Bank	4	Consolidation	Closing
Vance					
	Clayton Homes and CMH Mfg. Inc.	Home Manufacturing	113	Consolidation	Closing

Announced Business Closings and Permanent Layoffs[1] Dec. 2010 - Continued

County	Company	Product	Individuals Affected*	Reason	Closing/Layoff
Wake					
	O'Charley's Inc.	Restaurant	48	Underperformance	Closing
	O'Charley's Inc.	Restaurant	53	Underperformance	Closing
	White Rabbit Books	Bookstore	5	Economic Conditions	Closing
	ValueOptions Inc.	Service Center	155	Lost Contract	Layoff
	ZipRealty Inc.	Real Estate Agency	87	Restructuring	Closing
	Dex One	Yellow Pages Publisher	60	Cost Cuts	Layoff
Wilson					
	Carolina Insulation Co. of Wilson	Contractor	79	Bankruptcy	Closing
	Wilson County Sheriff's Office	Law Enforcement	19	Election Results	Layoff

[1]The data available are derived from a statewide survey of newspaper accounts of closings and layoffs, and from information supplied to the Employment Security Commission of North Carolina (ESC) by the employing units experiencing layoffs. The data are not all inclusive and do not meet Labor Market Information Division standards for accuracy. ESC staff members do not analyze or evaluate the accuracy of these reports. * 'Individuals Affected' represent numbers reported by media sources only. Actual numbers may differ. The table shows only closings where individuals 'Affected' are stated as four or more. Source: LMI of ESC. For more information, visit http://eslmi23.esc.state.nc.nc.us/masslayoff/

New Business Openings[1] December 2010

County	Company	Product	Possible Job Openings	City	Estimated Opening Date
Buncombe					
	Ingles Markets Inc.	Grocery Distribution Center	160	Asheville	12/31/2012
	Arvato	Digital Services	408	Weaverville	1/1/2014
Cabarrus					
	Distribution Technology	Logistics Company	86	Concord	5/1/2011
Durham					
	HTC Corp.	Smart Phone Maker	45	Durham	3/1/2011
Forsyth					
	Novant Health Inc.	Hospital	300	Kernersville	3/1/2011
	The Privilege Lounge	Upscale Night Club	40	Winston-Salem	2/14/2011
Hertford					
	Enviva LP	Wood Pellet Manufacturing Facility	53	Ahoskie	7/1/2012
Lee					
	Coty	Distribution Center	140	Sanford	3/1/2011
Lincoln					
	Hydac Technology Corp.	Manufacturing Facility	54	Denver	1/1/2014
Mecklenburg					
	BAE Systems	Accounting & HR Services	176	Charlotte	8/1/2011
	Red F	Marketing Company	60	Charlotte	1/1/2013
Union					
	Perfect Fit	Pillow Production Line	88	Monroe	10/1/2011
Vance					
	Optimum Lighting	Fluorescent Light Fixtures	100	Henderson	1/1/2012
	Sheetz	Fuel Station	35	Henderson	12/1/2011
Wake					
	SAS	Business-Analytics Software	100	Cary	1/1/2012
	Mellow Mushroom	Restaurant	80	Cary	5/1/2011
	Sparians Bowling Boutique & Bistro	Bowling Alley & Restaurant	100	Raleigh	12/13/2010

[1]The data shown are derived from a statewide survey of newspaper accounts of business openings, and from information supplied to the Employment Security Commission of North Carolina (ESC) by the employing units. Data are not all inclusive and ESC staff members do not analyze or evaluate the accuracy of these reports. Source: LMI of ESC

North Carolina Counties
with the Highest Regular UI Initial Claims Activity
December 2010

	Transactions		Individuals				
County	Initial Claims	Attached To Payroll	Female	African-American	White	45 Years and Older	Regular UI Benefits*
MECKLENBURG	4,976	1,464	1,935	2,150	1,690	1,736	$12,081,216
GUILFORD	4,508	2,638	1,601	2,086	1,436	1,769	$5,800,747
WAKE	4,117	1,697	1,507	1,569	1,554	1,494	$9,923,338
CATAWBA	2,648	2,040	813	229	1,781	1,163	$2,404,096
FORSYTH	2,533	1,224	886	874	1,043	900	$4,167,851
DAVIDSON	2,402	1,766	622	358	1,554	1,022	$2,061,522
RANDOLPH	2,283	1,679	697	130	1,567	979	$1,572,770
WILKES	2,100	1,886	691	221	1,385	893	$803,057
CUMBERLAND	1,737	608	766	885	554	592	$2,689,054
GASTON	1,690	840	588	315	1,113	661	$2,481,821

Source: ES-UI, LMI of ESC Note: 'Regular Initial Claims' represent transactions and not individuals. *Does not include Extended Benefits and Federal Additional Compensation.

The NC Employment Security Commission (ESC) paid $361,482,493 in Unemployment Insurance (UI) benefits to unemployed claimants across North Carolina during December 2010. These payments include state and federally funded benefits.

North Carolina paid $121,612,191 in regular UI benefits to 133,561 individuals during the month, an increase of 10,795 claimants since November 2010. The average UI weekly benefit amount was $277.04 (maximum weekly benefit is $506).

Regular UI Initial Claims filed during December 2010 totaled 83,358. This compares to 71,877 during November 2010. Of these claims, 47,549 or 57 percent remained attached to employers' payrolls.

Approximately 56 percent of regular UI Initial Claims filed during December 2010 were New Initial Claims, an increase of 5,598 from the prior month's New Initial Claims. Attached claims accounted for approximately 36 percent of these numbers.

Five of the state's counties — Mecklenburg, Guilford, Wake, Catawba and Forsyth — accounted for 23 percent of regular UI Initial Claims filed.

Five of the state's counties — Mecklenburg, Wake, Guilford, Forsyth and Cumberland — accounted for 29 percent of regular UI benefits received during the period.

During December 2010, the NC UI Trust and State Reserve Funds collected $7,481,885 in UI taxes and reported no interest.

The UI Trust Fund ending December 2010 had a negative balance of $2.5 billion, with a State Reserve balance of $89 million.

For December 2010, the UI Trust Fund had a federal loan balance of $2.5 billion.

During December 2010, 16,965 Emergency Unemployment Compensation (EUC08) Initial Claims were filed, of which 15,576 were New Claims. During the same period, 235,580 weeks were compensated for EUC08 benefits; 151,181 weeks for EUC II benefits; 139,067 weeks for EUC III; and 72,311 weeks for EUC IV. EUC Initial Claims are not included in the UI Regular Initial Claims counts.

During December 2010, $70,259,131 was paid in EUC08 benefits; $43,893,396 was paid in EUC II benefits; $40,631,126 was paid in EUC III benefits; and $20,755,186 was paid in EUC IV benefits. These benefits were paid through federal dollars.

During December 2010, 30,179 Extended Benefits (EB) Initial Claims were filed, of which 30,061 were New Claims. During the same period, 165,356 weeks were compensated for EB benefits. EB Initial Claims are not included in the UI Regular Initial Claims.

During December 2010, $49,100,492 was paid in total EB benefits. EB benefits are paid through state, federal, and stimulus recovery funding sources.

During December 2010, $1,286,361 was paid in Unemployment Compensation for Federal Employees (UCFE) benefits; $3,549,334 in Unemployment Compensation for Ex-Service Members (UCX) benefits; and $10,395,276 in Federal Additional Compensation (FAC) benefits.

Glossary of Terms

Announced Business Closings/Layoffs: Data derived from a statewide survey of newspaper accounts of closings and layoffs, and from information supplied to the North Carolina Employment Security Commission (ESC) by the employing units experiencing the layoffs. The data is not inclusive and is not analyzed or evaluated for accuracy.

Average Hourly Earnings: The average hourly earnings of all workers in selected industries. Earnings are calculated monthly from data collected through the Current Employment Statistics (CES) Program.

Average Weekly Hours: The average hours worked in a week for all workers in selected industries. They are calculated monthly from data collected through the Current Employment Statistics (CES) Program.

Benchmark: The annual process of re-estimating statistics as more complete information becomes available. Estimates are usually calculated using only a sample of the universe (total count). Benchmarking introduces new levels as points of reference (either estimates or counts) from which measurements and/or adjustments to estimates are based. Both industry employment collected by the Current Employment Statistics (CES) program and civilian labor force estimates provided by the Local Area Unemployment Statistics (LAUS) program are benchmarked.

Bureau of Labor Statistics (BLS): The federal agency that functions as the principal data-gathering source for labor economics for the federal government. As a part of the U.S. Department of Labor and in partnership with state agencies, the BLS collects, processes, analyzes, and disseminates data relating to employment, unemployment, the labor force, productivity, prices, family expenditures, wages, industrial relations, and occupational safety and health.

Civilian Labor Force: All persons in the civilian noninstitutional population (e.g., not on active duty in the Armed Forces, residing in penal, mental facilities or homes for the aged), 16 years of age and older and classified as either employed or unemployed. These estimates are calculated based on residency, not work location.

Civilian Noninstitutional Population: All persons 16 years of age and older who reside in the United States, are not institutionalized or on active duty in the Armed Forces.

Current Employment Statistics (CES): A federal Bureau of Labor Statistics (BLS)/state Employment Security Commission (ESC) cooperative program which performs a monthly survey of approximately 17,000 to 18,000 businesses in North Carolina that collects information as to the number of jobs on the payroll during the week that includes the 12th of that month. This data, which represents employment by industry division, are commonly referred to as the "establishment survey," "industry employment" or the "wage and salary employment series." Each month, the CES program releases preliminary employment and hours and earnings data for the prior month and revised data for the month preceding the prior month. Estimates are benchmarked annually at the beginning of each to reflect additional data collection. Estimates are calculated based on work location, not residency. Individuals who hold more than one job could be counted more than once.

Current Population Survey (CPS) or "Household Survey": A monthly household survey conducted by the Census Bureau for the Bureau of Labor Statistics (BLS). The information gathered from a sample of about 60,000 households nationally (approximately 1,500 households in North Carolina) is designed to be a representation of the civilian noninstitutional population aged 16 years and older and is used in calculating estimates of the civilian labor force, employment, unemployment and the unemployment rate for all states. Unlike the CES survey, individuals who participate in this survey and who are working at more than one job, are counted as employed only once.

Discouraged Workers (Current Population Survey): Persons not in the labor force who want and are available for a job, and who have looked for work sometime in the past 12 months (or since the end of their last job if held within the past 12 months), but who are not currently looking because they believe there are no jobs available or there are none for which they would qualify.

Durable Goods: Known as "hard goods," the term refers to manufactured or processed items generally considered to have a normal life expectancy of three years or more. The durable goods manufacturing industries are: Furniture & Related Product; Wood Product; Nonmetallic Mineral Product; Fabricated Metal Product; Machinery; Computer & Electronic Product; Electrical Equipment & Appliance, Transportation Equipment and Furniture & Related Product.

Employment: Used in Current Employment Statistics (CES), industry or establishment data referring to persons on establishment payrolls who received pay for any part of the pay period that includes the 12th day of the month. The data exclude proprietors, the unincorporated self-employed, unpaid volunteer or family workers, farm workers, and domestic workers. Salaried officers of corporations are included. Government employment covers only civilian employees; military personnel are excluded. Employees of the Central Intelligence Agency, the National Security Agency, the National Imagery and Mapping Agency, and the Defense Intelligence Agency also are excluded. Persons on establishment payrolls who are on paid sick leave (for cases in which pay is received directly from the firm), on paid holiday, or on paid vacation, or who work during a part of the pay period even though they are unemployed, or on strike during the rest of the period, are counted as employed. Not counted as employed are persons who are on layoff, on leave without pay, or on strike for the entire period, or who were hired but have not yet reported during the period. Employment is calculated by work location, not residency. Individuals may be counted more than once if they hold multiple jobs.

Used in Local Area Unemployment Statistics (LAUS), individuals 16 years of age and older who worked during the week that includes the 12th of the month for, (a) pay, (b) unpaid for 15 hours or more in a family-owned business, or (c) in their own business, profession or farm. Persons temporarily absent from their jobs due to illness, bad weather, vacation, labor dispute, or personal reasons are included. Individuals whose only activity consists of work around the house and/or volunteer work for religious, charitable, and similar organizations are excluded. Employment is calculated by residency, not work location. Each employed person is counted once even if working multiple jobs.

Employment-to-Population Ratio (E-P): The proportion of the civilian noninstitutional population that is employed.

Entrants (Current Population Survey): Unemployed persons who are entering the labor force as a new entrant or re-entrant.

Goods Producing: Industries including Mining, Construction and Manufacturing.

Hours of Work: The number of hours worked during the survey week. Individuals who work at least 35 hours are designated full-time workers; persons who work less than that are considered part time.

Industry: A group of establishments that produce similar products or provide similar services. For example, all establishments that manufacture automobiles are in the same industry. A given industry, or even a particular establishment in that industry, might have employees in dozens of occupations. The North American Industry Classification System (NAICS) groups similar establishments into industries.

Initial Claim: Includes new and additional initial claims. An additional initial claim is a subsequent initial claim filed to reopen a claim series during an existing benefit year. This occurs if a person again becomes unemployed when a break of one week or more has occurred in the claim series due to intervening employment.

Job Leavers: An unemployment category describing individuals who quit or otherwise terminate their employment voluntarily and immediately begin looking for work.

Job Losers: An unemployment category describing persons (a) who are on temporary layoff, who have been given a date to return to work or who expect to return within six months or (b) whose employment ended voluntarily and began looking for work.

Labor Force Participation Rate (LFP): The proportion of the civilian noninstitutional population that is in the civilian labor force (e.g. employed or unemployed and actively seeking work).

Labor Market Information (LMI): A term used to describe the delivery of labor force, employment, unemployment, wage, supply and demand, occupational, industrial and economic and demographic data for the analysis of manpower problems.

Labor Supply: The number of workers who are unemployed and seeking work, or who would seek employment if they believed jobs were available.

Layoff: Suspension from pay by the company for reasons such as lack of orders, plant breakdown, and shortage of materials or termination of seasonal or temporary employment.

Local Area Unemployment Statistics (LAUS): A federal Bureau of Labor Statistics (BLS)/state Employment Security Commission (ESC) cooperative statistical program which produces monthly and annual labor force, employment, unemployment, and unemployment rate estimates by place of residence for many geographic regions including states, counties, metropolitan and micropolitan statistical areas, and selected cities.

Metropolitan Statistical Area (Metro): A federal Office of Management and Budget (OMB) defined area having at least one urbanized area with a population of 50,000 or more. Metros may include adjacent counties that have a high degree of social and economic integration with the urban core as measured by commuting patterns. North Carolina has 14 Metros consisting of 39 counties.

New Business Openings: Data derived from a statewide survey of newspaper accounts of new business openings and from information supplied to the North Carolina Employment Security Commission (ESC) by the new employing units. The data is not inclusive and is not analyzed or evaluated for accuracy.

New Claimants: The first initial claim filed in person, by mail, telephone, or other means within a benefit year to request a determination of entitlement and compensation. This results in an agency-generated document of an appealable determination provided to the potential claimant.

New Entrants: An unemployment category comprised of individuals who have never worked.

Nondurable Goods: Known as "soft goods," nondurable goods refer to manufactured or processed items generally considered to last for a short time — three years or less. The nondurable manufacturing industries include Food; Beverage & Tobacco Products; Textiles; Apparel; Paper; Printing; Chemical; and Plastics & Rubber Manufacturing.

North American Industry Classification (NAICS): An industrial classification system using a production-based framework, with special attention to new and emerging industries (service industries in general) and industries involved in advanced technology. It is an outgrowth of the North American Free Trade Act (NAFTA) and allows the collection and tabulation of industry-level data to measure the economic impact of employers shifting activities between Canada, Mexico and the United States. Classification is by major economic group or sector (two-digit), economic subsector (three-digit), industry group (four-digit), international industry level (five-digit), and national industry level (six-digit, optional) in order of increasing detail. Conversion from Standard Industrial Classification system (SIC) to NAICS was a three-year cycle that began with data collected in 1999. CES industries are often combinations of several NAICS codes.

Not in the Labor Force-Other Reasons: Individuals who are not counted as unemployed because they are not actively seeking work for such reasons as school, family responsibilities, ill health or transportation problems.

Not Seasonally Adjusted: An economic time series that is not statistically adjusted to eliminate seasonal fluctuations such as weather, holidays and the opening and closing of schools. This data is not comparable month to month. All levels of civilian labor force and CES estimates have a not seasonally adjusted series.

Race (White, Black or African American, and Asian): Terms used to describe the identity of respondents to the Current Population Survey (CPS). Individuals in these categories are those who selected that race group only. Others who selected the remaining groups (American Indian, Alaska Native, Native Hawaiian or Other Pacific Islanders) or selected more than one race category are included in the total labor force estimates, but are not shown separately because the number of respondents is too small to develop estimates.

Re-entrants: An unemployment category comprised of individuals who previously worked, but who have been out of the labor force prior to beginning their most recent job search.

Seasonally Adjusted: A statistical adjustment eliminating the influence of weather, holidays, the opening and closing of schools and other recurring seasonal events from an economic time series. By smoothing these seasonal fluctuations, the data is easier to compare month to month. Only the United States and North Carolina state civilian labor force and CES employment estimates are seasonally adjusted. Estimates for both series below the state level are unadjusted.

Service Providing: Industries including Trade, Transportation & Utilities; Information; Financial Activities; Professional & Business; Educational & Health; Leisure & Hospitality; Other and Government.

Survey Week: The week each month that includes the 12th during which BLS conducts most of its surveys. Exception may be made in December and December when the survey week may be moved forward one week to avoid holiday collection and data problems.

Unemployed: Persons having no employment during the week that includes the 12th of the month, but were available for work, had made specific efforts to find employment during the four weeks prior, were waiting to be recalled to a job from which they had been laid off, or were waiting to report to a new job within 30 days.

Unemployment Insurance: Unemployment insurance is a program for the accumulation of funds paid by employers, to be used for payment of unemployment insurance to workers during periods of job loss which is beyond their control. Unemployment insurance replaces a part of the worker's wage loss if he/she becomes eligible for payments.

Unemployment Rate: The number of unemployed people as a percentage of the labor force [i.e., (unemployed/labor force) x 100].

Weeks Claimed: Weeks covered for which waiting period credit or payment of compensation is requested.

A presentation by

Billy Ray Hall

President, N.C. Rural Economic Development Center

to the

Joint Committee on
Commerce and Job Development

Wednesday, February 16, 2011

NORTH CAROLINA

Capital Access Program

Job growth through increased business lending

Rural Center

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Why we're bullish

- Cost-effective
- Non-bureaucratic
- Proven

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NC-CAP 1994-2007

- $3.6 million in CAP funding
- 1,850 loans
- $103 million value
- 27,283 jobs created/retained

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NC-CAP 1994-2007

- 1:28.5 - $ leverage
- 4.85% default rate

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A new opportunity

2010 Small Business Jobs Act

- $46.1 million federal investment in N.C.
- up to $800 million in business lending

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Concept

A pooled reserve fund for slightly higher risk loans

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For lenders

- Voluntary participation
- Standard loan application procedure
- NC-CAP option available
- Decision-making retained

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For loans assigned to NC-CAP

- Borrower fee of 2%-7%
- NC-CAP match
- Reserve fees pooled for each lender
- Reserves cover any NC-CAP default with that lender

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Eligible lenders

- Banks
- Federally insured credit unions
- CDFIs

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Banks expressing interest

BB&T
First Citizens
Wachovia Wells Fargo
RBC
First Bank
Southern Bank & Trust
New Bridge Bank
The East Carolina Bank
Southern Community Bank
Four Oaks Bank & Trust
First National Bank of Shelby
Citizens South Bank
Macon Bank
Randolph Bank
Carolina Trust Bank
Bank of Stanly
Select Bank
First Tennessee Bank
Cabarrus Bank & Trust
Blue Harbor Bank
Anson Bank & Trust
KeySource Commercial Bank
Mechanics and Farmers
Carolina Premier Bank
Asheville Savings Bank
First Federal Bank
Trust Atlantic Bank
Bank of Oak Ridge
HomeTrust Bank
Paragon Commercial Bank
Crescent State Bank
First South Bank
Old Town Bank
Community Bank of Rowan
Mountain 1st
Nantahala Bank
Fidelity Bank
Self-Help Credit Union
Allegacy Credit Union

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Eligible businesses

- Up to 500 employees

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Eligible loans

- Up to $5 million for
  - real estate
  - construction
  - equipment
  - working capital

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Eligible loans

- Term loans – up to 10 years
- Lines of credit – up to 7 years

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Prohibited loans

- Refinancing existing debt
- Passive or investment real estate
- Certain other uses

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Other qualifications

- Good credit
- Solid business plan
- Investment by owner
- Collateral
- Personal guarantee(s)
- Ability to repay

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How do I get started...

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...if I'm a business?

- Contact your local lender
  - ask about NC-CAP
  - discuss your business plan
- Check nc-cap.org for participating lenders

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...if I'm a business?

- Consult your local business service network
  - Small Business Center
  - Small Business and Technology Development Center
  - SCORE
  - Chamber of commerce
  - Economic development office
  - www.blnc.com

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...if I provide technical assistance to businesses?

- Share today's information with
  - o businesses
  - o your boards and advisory committees
- Download materials for sharing at www.nc-cap.org.
- Request a presentation
- Follow website for program updates

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...if I'm a lender?

- Stay for the lenders session

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Rural Center

Contact:

Tony Johnson
Senior Director of Business Development
N.C. Rural Center
tejohnson@ncruralcenter.org
919.250.4314

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Questions?


The
Rural
Center

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OVERVIEW

The North Carolina Capital Access Program (NC-CAP) will work with banks and other eligible financial institutions to create capital opportunities for entrepreneurs who might not otherwise qualify for financing. The program aims to build the North Carolina economy by allowing more small businesses to expand their operations and create new jobs.

NC-CAP provides matching loan loss reserves for loans that fall just outside a lending institution's normal underwriting standards, depositing the funds into a pooled account at the participating institution. It is expected to enable up to $800 million in business lending.

All businesses located in North Carolina with 500 or fewer employees are eligible for loans under the program. The maximum loan amount is $5 million.

Loans may be used to finance the acquisition of land, construction or renovation of buildings, purchase of equipment and working capital. The program has some limitations on passive real estate and refinancing of existing debt..

North Carolina will receive $46.1 million in loan loss funds through the State Small Business Credit Initiative, part of the federal Small Business Jobs Act of 2010 passed in September. Governor Beverly Perdue designated the Rural Center to administer the North Carolina program.

History of NC-CAP

The Rural Center previously operated the Capital Access Program from 1994 to 2008 with funding from the N.C. General Assembly, the U.S. Small Business Administration, the Golden LEAF Foundation and the Appalachian Regional Commission.

During this time, lending institutions throughout North Carolina made 1,850 small business loans totaling more than $103 million. These loans helped create or save more than 27,000 jobs.

Capital Access Program, 1994-2008

Number of loans statewide	1,850
Total amount	$103,173,747
Jobs created or retained	27,283
Reserve funds	$3,609,574
Leverage ratio	1:28.5

Participating in NC-CAP

For information on loan opportunities, small business owners should inquire at an eligible lending institution about participation in NC-CAP. Eligible institutions are federally insured banks and credit unions, and community development financial institutions.

Participating institutions are solely responsible for approving all loans, setting their terms and deciding a loan loss reserve fee to be shared by the lender and borrower and matched by NC-CAP.

To participate in NC-CAP, an institution must sign a lender participation agreement. Lender training will be offered regionally throughout the state. Training will begin February 18, 2011.

For more information

To learn more about the Capital Access Program, contact Tony Johnson, senior director of business development at the Rural Center, at (919) 250-4314 or tejohnson@ncruralcenter.org.

NORTH CAROLINA

Capital Access Program

The Rural Center

REGIONAL BRIEFINGS

In September, the U.S. Congress passed the federal Small Business Jobs Act of 2010. Under the act, North Carolina has received $46.1 million to boost business and job growth through the North Carolina Capital Access Program (NC-CAP). Governor Beverly Perdue has designated the N.C. Rural Economic Development Center to administer the program in all 100 counties. The potential impact of NC-CAP on the economy of our state is immense, but only if we all do our parts – banks, businesses and the state's business support network. Find out what you can do to help make NC-CAP a success. Please *join us for a regional briefing near you* or learn more about the program through the sources listed in this announcement.

Charlotte and Hickory: Friday, February 18

8:30 a.m. **Central Piedmont Community College**
Levine Campus, Auditorium/Room 2150, 2800 Campus Ridge Road, Matthews
Directions: www.cpcc.edu/campuses/levine/directions

12:30 p.m. **Catawba Valley Community College**
Cuyler A. Dunbar Building, Auditorium, U.S. 70 Southeast, Hickory
Directions: www.cvcc.edu/About_Us/Main_Campus_Map.cfm

Raleigh: Thursday, February 24

12:30 p.m. **North Carolina Rural Economic Development Center**
Education and Training Center, 4021 Carya Drive, Raleigh
Directions: www.ncruralcenter.org/directions-to-the-center.htm

Asheboro and Winston-Salem: Friday, February 25

8:30 a.m. **Randolph Community College**
Learning Resource Center, 629 Industrial Park Avenue, Asheboro
Directions: www.randolph.edu/welcome/maps.php

12:30 p.m. **Forsyth Technical Community College West Campus**
West Campus Auditorium, 1300 Bolton Street, Winston-Salem
Directions: www.forsythtech.edu/services-students/campus-life/locations/west-campus

Lumberton and Wilmington: Monday, February 28

8:30 a.m. **Robeson Community College**
Workforce Development Center, BB&T Room, 5160 Fayetteville Road, Lumberton
Directions: www.robeson.edu/directions/campus_map.html

Lumberton and Wilmington: Monday, February 28

12:30 p.m. Cape Fear Community College, North Campus
McKeithan Center Auditorium, 4500 Blue Clay Road, Castle Hayne
Directions: http://cfcc.edu/campusmap/northcampus.html

Sylva and Asheville: Monday, March 7

8:30 a.m. Southwestern Community College, Jackson Campus
Myers Auditorium, Room 148B, 447 College Drive, Sylva
Directions: www.southwesterncc.edu/centers/jackson.htm

12:30 p.m. Asheville-Buncombe Technical Community College, Enka Site
Large Conference Room, 1459 Sand Hill Road, Candler
Directions: http://abtech.edu/maps/enka.asp

Greenville and Elizabeth City: Monday, March 14

8:30 a.m. East Carolina University
Willis Center, Auditorium, 300 East First Street, Greenville
Directions: www.ecu.edu/cs-admin/oeied/directions.cfm

12:30 p.m. Elizabeth City State University
K.E. White Graduate Center, 1806 Weeksville Road, Elizabeth City
Directions: www.sbtdc.org/offices/index.asp?cboCounty=46

Regional Briefings

Meetings will begin promptly at the times listed above. The opening session (45 minutes) will provide a general overview of NC-CAP for lending institutions, business owners, local officials, economic development professionals, business service providers and other interested individuals. The second session (60 minutes) will be an orientation for lending institutions only. For a full agenda, visit **www.ncruralcenter.org/events/494-cap-access-agenda.html**. A light breakfast will be provided at morning meetings and a light lunch at midday meetings. Registration and food service will open 30 minutes before the briefing begins. **Seating is limited. Registration is required.**

To Register

Send an e-mail to nc-cap@ncruralcenter.org.
Please include the names of all individuals who will attend from your organization, the name of your organization and which session you plan to attend.

Background

NC-CAP will partner with banks and other qualified lenders to reduce lender risks, enabling loans to businesses that might not otherwise qualify for financing. It is expected to free up to $800 million in capital for North Carolina's small businesses over the next two years.

Sources of Information on NC-CAP

N.C. Rural Economic Development Center:
www.ncruralcenter.org or 919-250-4314

Business Link North Carolina:
www.blnc.gov or 800-228-8443

For More Information

Tony Johnson
Director of Business Development
N.C. Rural Economic Development Center
4021 Carya Drive
Raleigh, NC 27610
(919) 250-4314
tejohnson@ncruralcenter.org

SPONSORS

North Carolina Department of Commerce

North Carolina Bankers Association

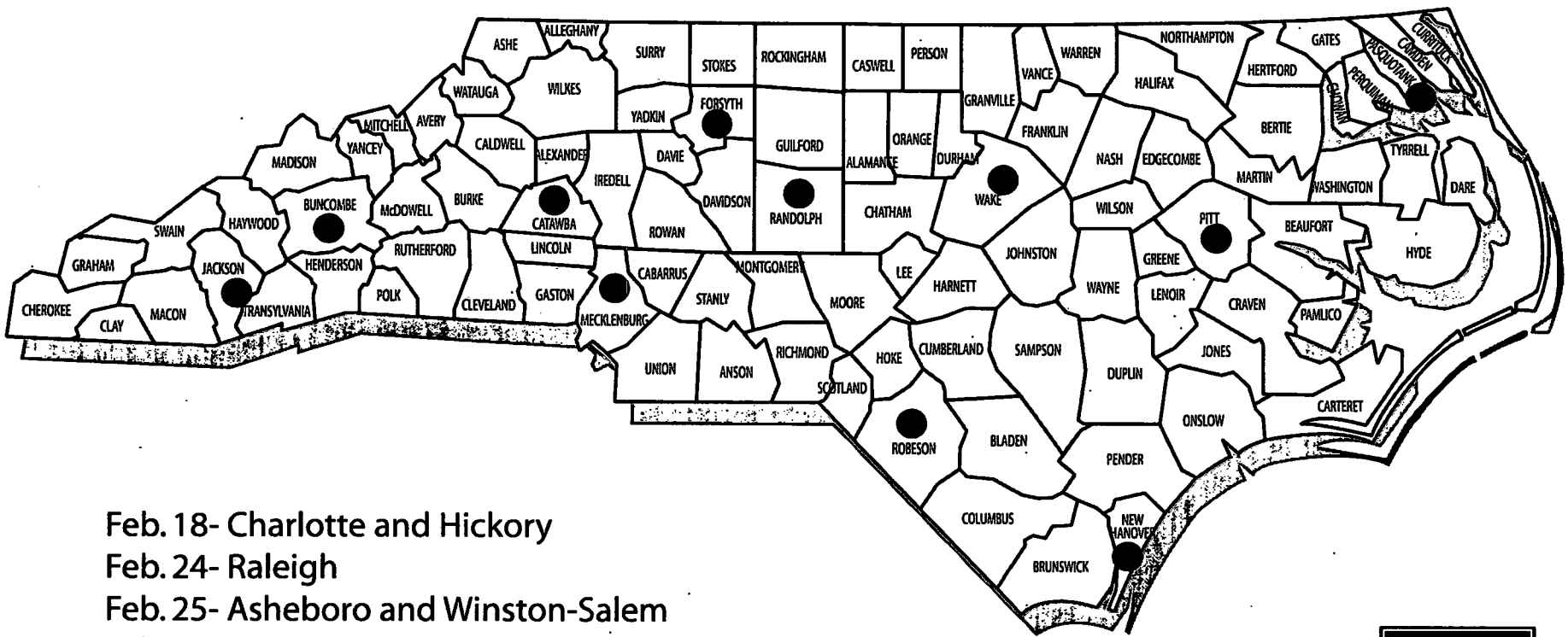
North Carolina Rural Economic Development Center

No state funds were used to produce this material.

North Carolina Capital Access Program

Regional briefings

February 18 - March 14, 2011



Feb. 18- Charlotte and Hickory
Feb. 24- Raleigh
Feb. 25- Asheboro and Winston-Salem
Feb. 28- Lumberton and Wilmington
Mar. 7- Sylva and Asheville
Mar. 14- Greenville and Elizabeth City

The Rural Center

NORTH CAROLINA

Capital Access Program

The Rural Center

A BUSINESS OWNER'S GUIDE

The North Carolina Capital Access Program expands business finance options for businesses across the state. By reducing risk, it encourages banks and other qualified lenders to consider loans that otherwise fall just outside conventional underwriting standards.

The program will enable up to $800 million in business lending over two years, freeing capital in a tight credit market. Increasing access to capital helps build a stronger economy through job creation and business expansion.

NC-CAP is made possible by $46.1 million in federal funding under the federal Small Business Jobs Act of 2010. Gov. Beverly Perdue designated the Rural Center to administer the program in all 100 counties.

How does NC-CAP work?

The program matches an up-front fee, typically 2 percent to 7 percent, paid by the lender and borrower. The combined amount is deposited into a pooled reserve fund held by the lender. The pooled fund includes matching fees from all NC-CAP loans made by the institution and covers losses in the event of a default.

Who is eligible?

Any North Carolina business with 500 or fewer employees is eligible for an NC-CAP loan.

What kinds of loans are eligible?

- Loans generally range from $25,000 up to the maximum of $5 million.
- Both term loans and lines of credit are eligible.

Loans may be used to finance most business purposes, including real estate, construction, equipment and working capital. (Loans may not be used for refinancing of existing debt, paying delinquent taxes, lending activities, passive or investment real estate, gambling or speculative ventures, or any illegal activity.)

How do I get a loan?

You apply for the loan through your local lender. You may ask to be considered for an NC-CAP loan at that time. The lender will make all loan decisions and determine whether a fee is required. You will be expected to meet all the normal borrowing requirements, including credit rating and collateral.

I can go to any bank?

Lenders are currently being enrolled. A list of participating institutions will be posted on the N.C. Rural Center website and updated as lenders join the program (www.ncruralcenter.org). Eligible institutions are federally insured banks and credit unions, and community development financial institutions.

For lenders, participation is voluntary. If your bank does not participate or needs information, ask the bank to contact the Rural Center at 919-250-4314.

What do lenders look for in NC-CAP loans?

- Good credit -- that is, no bankruptcies, judgments, delinquencies or unexplained slow payments
- A good, actionable business plan
- Sufficient investment on your part in the business
- Collateral (fixed assets, equipment, real estate)
- Ability to repay

How can I improve my chances?

Make sure you have a good business plan. The small business center at your local community college or the nearest office of the Small Business and Technology Development Center may be able to help.

Business Link North Carolina also provides an access point to services and other offerings provided by state-supported agencies. To reach a BLNC business consultant, visit www.blnc.gov or call toll-free, 1-800-228-8443.

In addition, the Capital Access Network helps qualified small and mid-size businesses secure financing. It assists borrowers in preparing more effective loan applications and encourages broader bank participation in government-supported lending programs. For more information, go to www.canislending.com or call 1-800-228-8443.

Is NC-CAP brand new?

Capital Access Programs have a nationally proven track record lasting more than 20 years. The Rural Center operated a previous version of NC-CAP from 1994 to 2008. During that period, $3.6 million in NC-CAP funds generated $103 million in business loans. A total of 1,850 loans allowed businesses to create or retain more than 27,000 jobs.

For more information

Visit www.ncruralcenter.org.

Contact

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02/2011
No state funds were used to produce this material.

BANKS EXPRESSING INTEREST

BB&T
First Citizens
Wachovia Wells Fargo
RBC
First Bank
Southern Bank & Trust
New Bridge Bank
The East Carolina Bank
Southern Community Bank
Four Oaks Bank & Trust
First National Bank of Shelby
Citizens South Bank
Macon Bank
Randolph Bank
Carolina Trust Bank
Bank of Stanly
Select Bank
First Tennessee Bank
Cabarrus Bank & Trust
Blue Harbor Bank
Anson Bank & Trust
KeySource Commercial Bank
Mechanics and Farmers
Carolina Premier Bank
Asheville Savings Bank
First Federal Bank
Trust Atlantic Bank
Bank of Oak Ridge
HomeTrust Bank
Paragon Commercial Bank
Crescent State Bank
First South Bank
Old Town Bank
Community Bank of Rowan
Mountain 1st
Nantahala Bank
Fidelity Bank
Self-Help Credit Union
Allegacy Credit Union

HOMEGROWN JOBS

The North Carolina Rural Economic Development Center

A report to the N.C. General Assembly
on program impact since 2004

The Rural Center

November 2010

If North Carolina as a whole is to prosper, its rural communities must prosper as well

North Carolina's 85 rural counties are home to more than 100,000 businesses, nearly half the state's work force and many of its most productive land, water and forest resources. Yet in recent decades, much of rural North Carolina has been rocked by seismic shifts in the economy that have cost thousands of jobs in traditional industries. Lagging educational levels, aging infrastructure and the cumulative impacts of economic and natural disasters have added to the stress.

Rural N.C. in November 2010

- 19.5% employment in manufacturing, down from 42.7% in 1990
- 201,518 unemployed
- 726,348 in poverty
- 12 counties losing population

Created in 1987, the N.C. Rural Economic Development Center leads an aggressive effort to bring opportunity and resources to these rural communities. Specifically, its mission is to develop, promote and implement sound economic strategies to improve the quality of life of rural North Carolinians, with a special focus on individuals with low to moderate incomes and communities with limited resources. The center is a nonpartisan, nonprofit organization funded by both public and private sources and led by a 50-member board of directors.

Strengthening rural North Carolina through job creation and water & sewer improvements

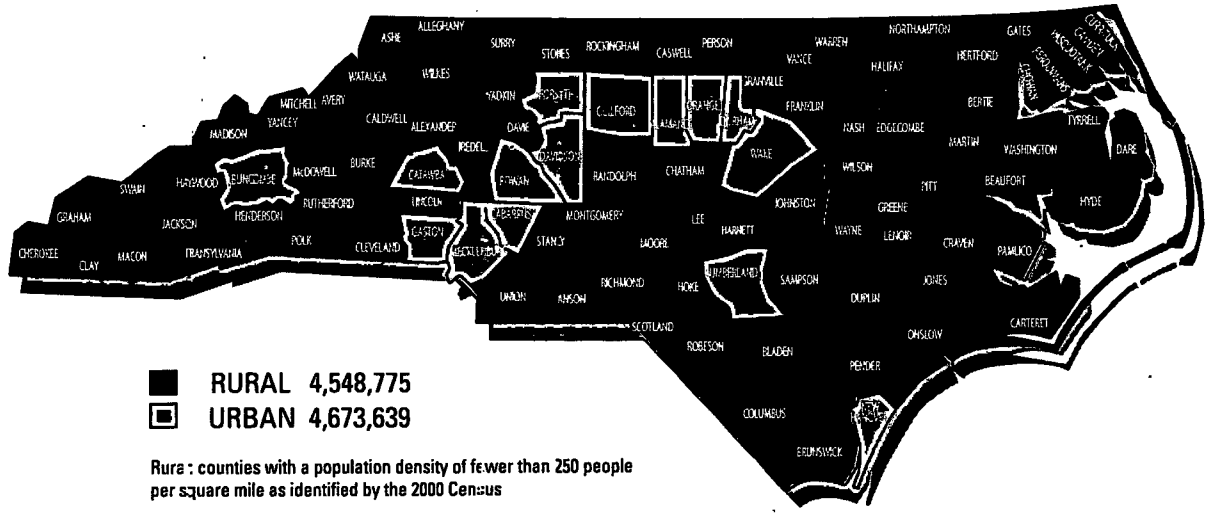
From its origin, the Rural Center has had a strong working relationship with the N.C. General Assembly. Together, they have sought:

- to ensure that rural communities have adequate access to clean water and wastewater treatment systems, which are essential for business growth, public health and environmental protection
- to create jobs and business opportunities in communities hit hard by recession, structural changes in the economy and natural disasters

The center addresses these goals through programs that tackle specific challenges in rural communities. Several directly address job creation. Others focus on creating the conditions for business and economic development. This report provides a brief description of the programs and their impact since 2004.

For FY2011, the General Assembly has appropriated $22 million to the Rural Center in the continuation budget, with additional one-time appropriations totaling $5 million.

Rural and Urban Counties



RURAL 4,548,775
URBAN 4,673,639

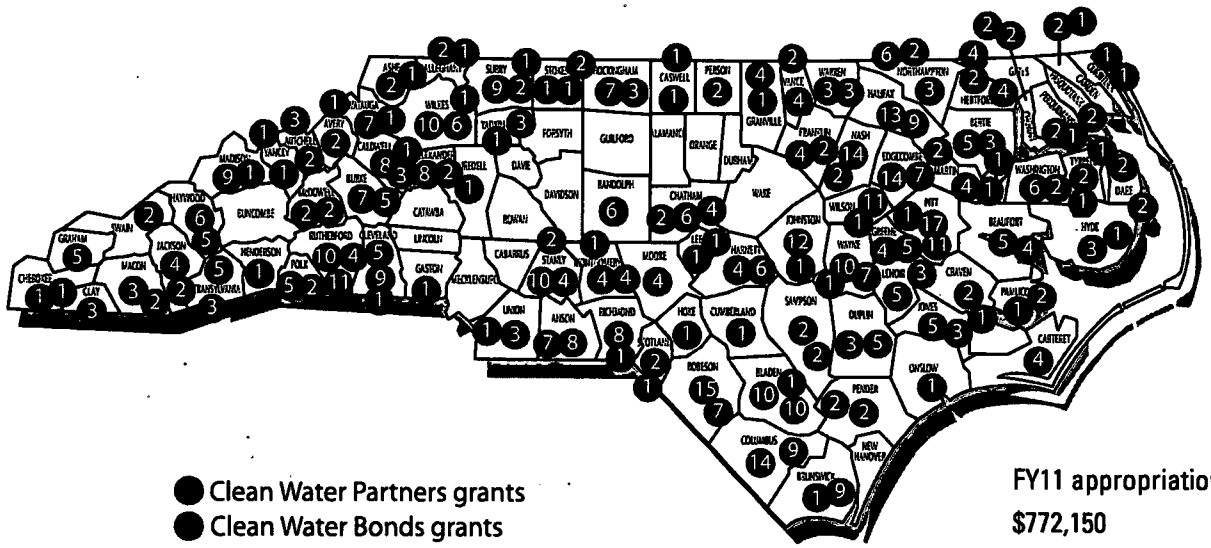
Rural: counties with a population density of fewer than 250 people per square mile as identified by the 2000 Census

Clean Water Programs, 2004-2010

Purpose: To alleviate serious threats to public health and the environment through planning and construction of water and sewer projects

684 projects
$195.8 million in grants

833,769 customers served
$707.6 million leveraged



- Clean Water Partners grants
- Clean Water Bonds grants
- Supplemental grants

FY11 appropriation:
$772,150

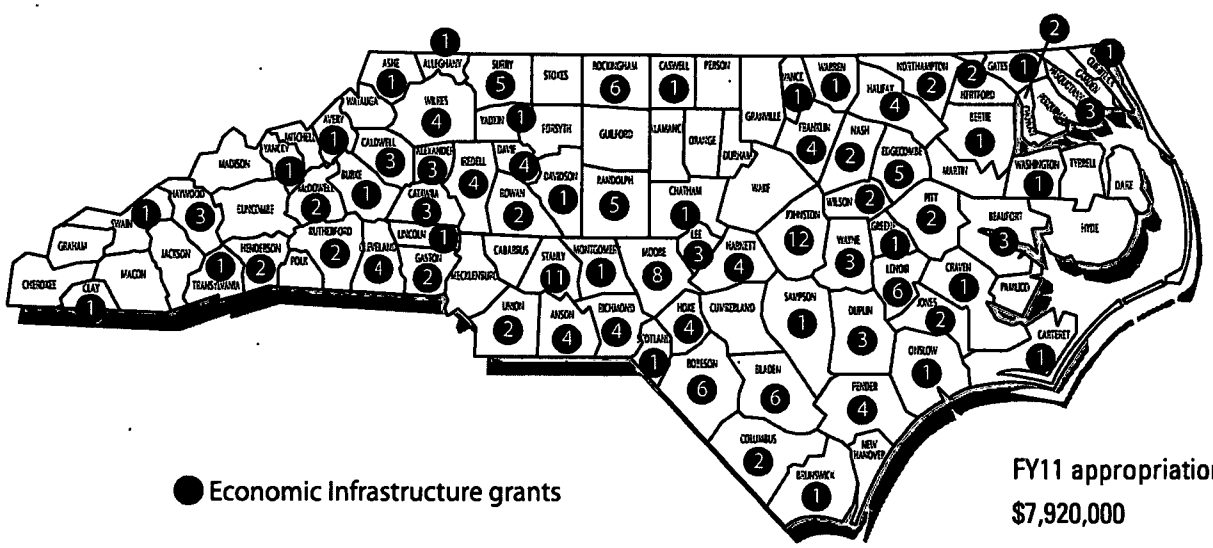
Job-Generating Infrastructure Grants, 2004-2010

Purpose: To generate new jobs in rural communities through water & sewer projects

196 projects
$62.4 million in grants

$131 million leveraged
7,488 jobs created

235 businesses created/ expanded



- Economic Infrastructure grants

FY11 appropriation:
$7,920,000

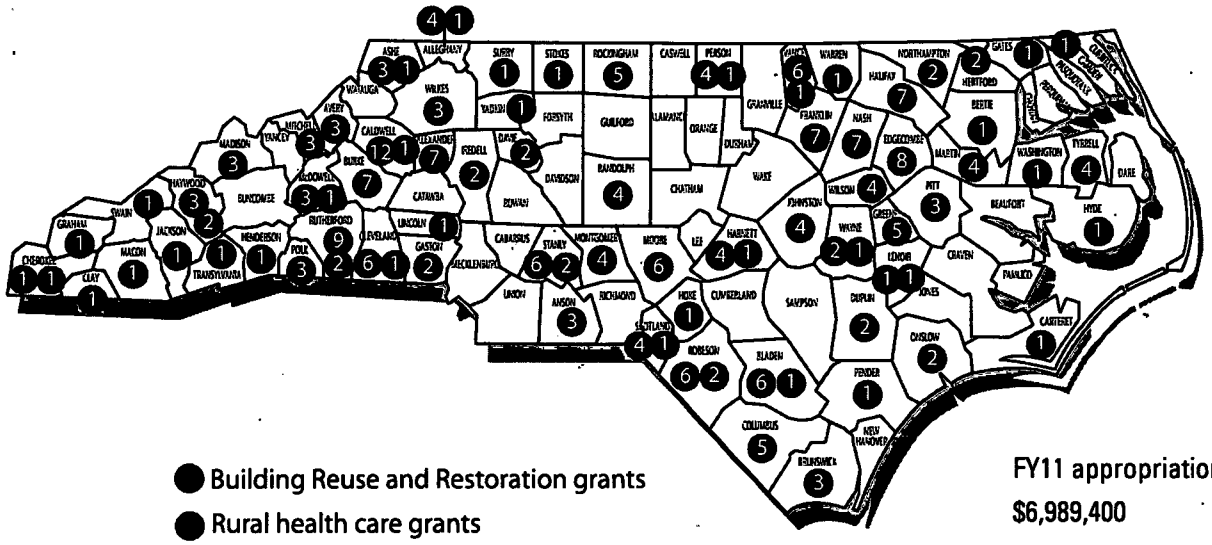
Building Reuse and Restoration, 2004-2010

Purpose: To create jobs by returning vacant buildings to job-generating use or by the construction or renovation of health care facilities

250 projects
$32.3 million in grants

$315 million leveraged
5,210 jobs created

316 businesses created/ expanded



● Building Reuse and Restoration grants
● Rural health care grants

FY11 appropriation:
$6,989,400

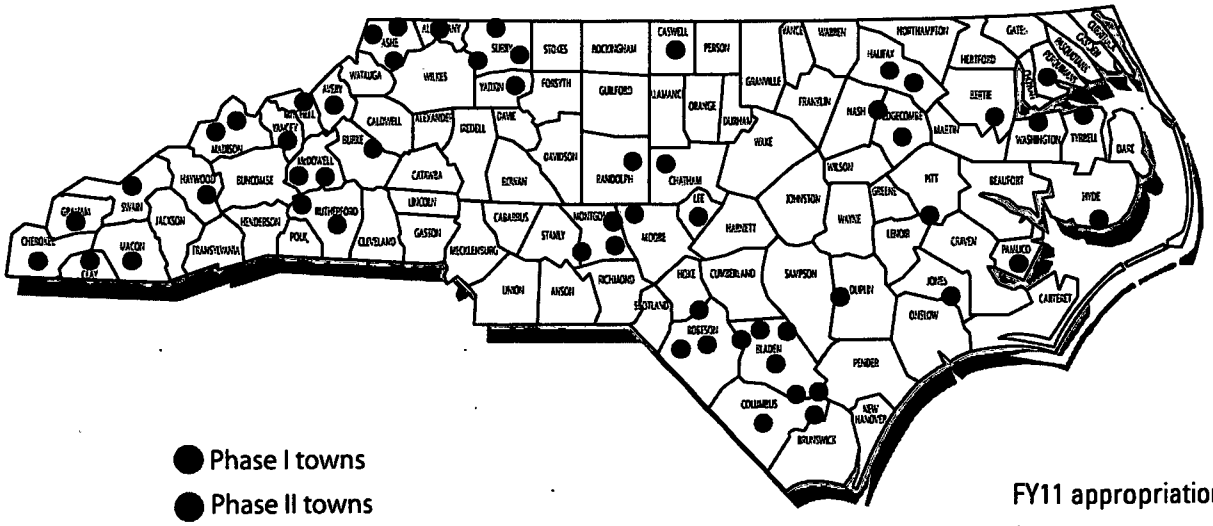
N.C. Small Towns Economic Prosperity Program, 2004-2010

Purpose: To help small towns create new economic opportunities

56 participating towns
45 economic development plans completed

220 economic development projects under way
1,290 jobs created

169 businesses created/expanded
$7.4 million in grants committed



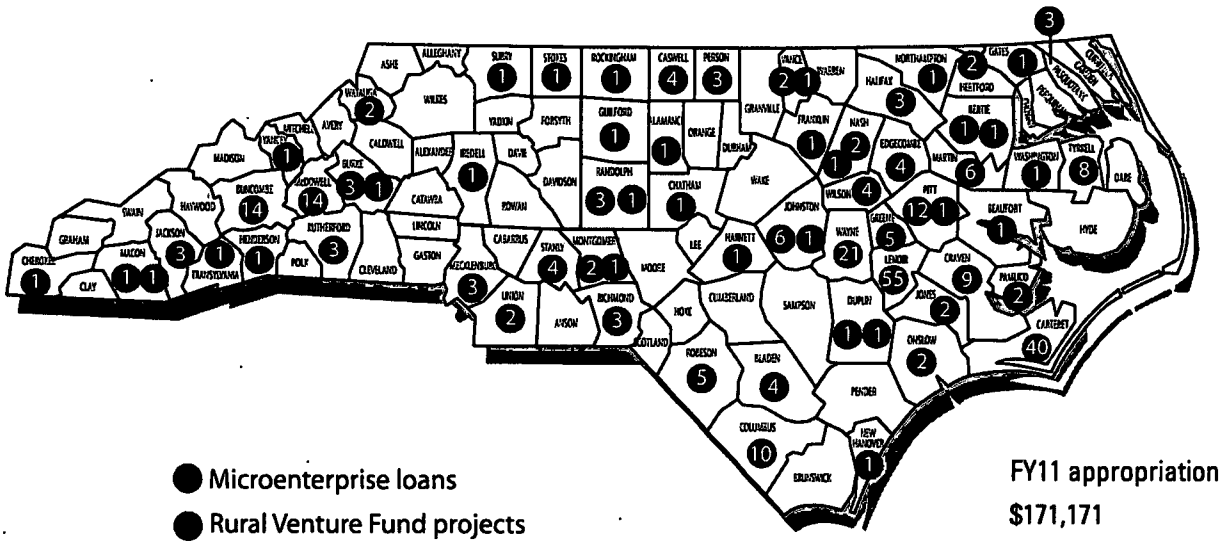
● Phase I towns
● Phase II towns
● Phase III towns

FY11 appropriation:
$112,860

Small Business Loans, 2004-2010

Purpose: To create jobs by filling gaps in business lending opportunities for new and expanding small businesses

351 business loans
$5 million in loans
$3.4 million leveraged
839 jobs created



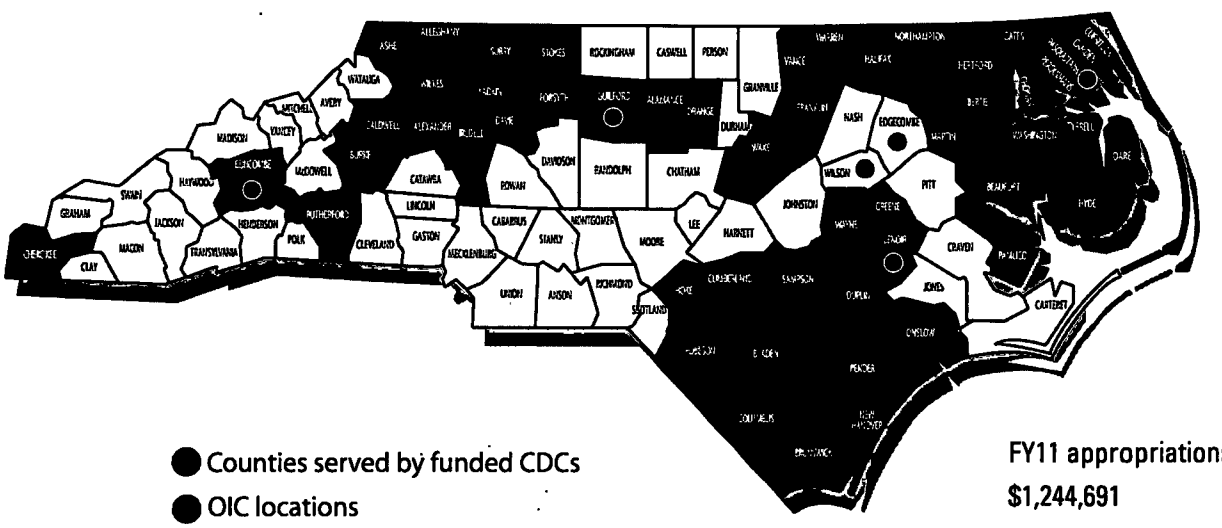
● Microenterprise loans
● Rural Venture Fund projects

FY11 appropriation:
$171,171

Community Economic Development, 2004-2010

Purpose: To encourage economic development in minority communities through support for locally controlled, community development organizations

164 CDC grants
$6.7 million in grants
$103 million leveraged
493 jobs created
827 home foreclosures prevented
31 grants totaling $2 million for OICs



● Counties served by funded CDCs
● OIC locations

FY11 appropriations:
$1,244,691

Economic Innovation Grants Program

Economic Innovation grants test new strategies for job creation. Since the program was established in 2004, the center has awarded $16.7 million for 125 projects that touch every rural county and are projected to serve 443 businesses and create 3,661 jobs. FY11 appropriation: $2,772,000

Institute for Rural Entrepreneurship

The Institute for Rural Entrepreneurship works with rural communities to stimulate the start-up and growth of locally owned companies. Project GATE, or Growing America through Entrepreneurship, has helped 724 unemployed workers with business coaching and training to pursue self-employment. FY11 appropriation: $126,027

Agricultural Advancement Consortium

The Agricultural Advancement Consortium promotes new ways to increase farm profitability and builds consensus on critical issues among the state's farm leadership. Through the consortium, the center in 2010 partnered with five state and federal programs to leverage a $1 million state appropriation, making a total of $18.4 million in assistance available to North Carolina famers. FY11 appropriation: $100,633

N.C. Rural Economic Development Center

Total Impact

January 2004-November 2010

Total Grant Projects:	1,381
Total Grants:	$323 million
Total Business Loans:	351
Total Loan Amount:	$5 million
Total Businesses Created/Expanded:	1,514
Total Leveraged:	$1.3 billion
Total Water-Sewer Customers Served:	834,004
Total Jobs Created:	18,981

4021 Carya Drive, Raleigh NC 27610 • Telephone 919.250.4314 • Fax 919.250.4325
www.ncruralcenter.org

FORM 1

Sgt. @ Arms - Sheet

ATTENDANCE

HOUSE COMMITTEE ON COMMERCE AND JOB DEVELOPMENT

2011 - 2012 SESSION

DATES	Joint Mtg 2/16														
Danny McComas, CHAIR	✓														
VICE-CHAIRS															
Bill Brawley	✓														
Craig Horn	✓														
Carolyn Justice	✓														
Phillip Shepard	✓														
Fred Steen	✓														
Mike Stone	✓														
Tim Moffitt	✓														
Alma Adams	✓														
Kelly Alexander	✓														
Marilyn Avila	✓														
Larry Bell															
Jamie Boles	✓														
Glen Bradley	✓														
Marcus Brandon	✓														
Larry Brown	✓														
Bru Brubaker															
Becky Carney	✓														
Jeff Collins	✓														
Bill Cook															
William Current	✓														
Jerry Dockham	✓														
Nelson Dollar	✓														
Jean Farmer-Butterfield	✓														

FORM 1

Elmer Floyd	✓														
Dale Folwell	✓														
Phillip Frye	✓														
Pryor Gibson	✓														
Ken Goodman	✓														
Charles Graham	✓														
Mike Hager	✓														
Susi Hamilton	✓														
Kelly Hastings	✓														
Dewey Hill	✓														
Bryan Holloway															
Maggie Jeffus	✓														
Linda Johnson	✓														
Stephen Laroque	✓														
David Lewis															
Marvin Lucas	✓														
Darrell McCormick	✓														
Marian McLawhorn	✓														
~~Tim Moffitt~~	✓														
Rodney Moore	✓														
Tom Murry															
Bill Owens	✓														
Diane Parfitt	✓														
Garland Pierce	✓														
Ray Rapp	✓														
Efton Sager	✓														
Ruth Samuelson	✓														
Norman Sanderson	✓														
Mitch Setzer															

FORM 1

Timothy Spear	✓														
Edgar Starnes	✓														
Joe Tolson	✓														
John Torbett	✓														
William Wainwright	✓														
Edith Warren	✓														
Harry Warren	✓														
Roger West	✓														
Winkie Wilkins	✓														
Larry Womble	✓														
Michael Wray															

VISITOR REGISTRATION SHEET

JT. HOUSE AND
Senate Commerce Committee — Feb. 16, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sean McKillen	Nelson Mullins
Tim Kent	NC Beer & Wine Wholesalers
Chris Galanis	" " "
Daniel Ambuia	NCLM
LC Penegar	Carolina State Strategies
[illegible]	Belk
BILL SCOGGIN	TSS
Preston Howard	NCIC
Wendy Kelly	Policy Group
Lorrie Turner	T-Mobile
[illegible]	NCMA

VISITOR REGISTRATION SHEET

Jt. House AND Senate Commerce Committee
Name of Committee

Feb. 16, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NC DOR
Carl Howell	DOT
David Heiron	NC Center for Nonprofits
Lao Rubens	CJPC
Brad Phillips	TWC
[illegible]	TWC
Gary Salamido	GSK
Roland Lamb	GSK
John Mull	MWC
Alan Briggs	NC Food Banks
[illegible]	Coop Ext Service NCSU

VISITOR REGISTRATION SHEET

Jt. House and Senate Commerce Committee — Name of Committee

Feb. 16, 2011 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
T Thom Mann	Fair Wild Alliance
DAVID BARNES	PS
Mitch Lunsford	SEANC
Allison Wallace	Charlotte Chamber
Michelle Frazier	MFFS
Will Culpepper	MVA
[illegible]	Misc
Tony Johnson	NC Rural Center
Billy Ray Hall	NC Rural Center
Billy Yelton	"
Patrick Woodie	"
JOHN GOODMAN	NC CHAMBER

VISITOR REGISTRATION SHEET

JT. HOUSE AND
Senate Commerce Committee — Feb. 16, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Wimmer	OSBM
Larry Heckner	Clark Lytle & Geduldig
Chris Kukla	CNE
Katie Stanley	Commerce
Erik Brinkley	Blue Ridge Mtn. EMC – Economic Develop.
Ed Fulghum	Bradley Arant
Mike Okun	NC State AFL-CIO
Debra Dear	ESC
Rachael Taylor	ESC
Cady Thomas	NLAR
David McEwan	"

VISITOR REGISTRATION SHEET

JT. HOUSE AND
Senate Commerce Committee — Feb. 16, 2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders Assoc.
Linda Sebastian	L.A. - Rep. Tom Murry
Elizabeth McGuire	ESC
Jerry Fralick	SCIO/ITS
Julia Cogen	SCIO ITS
Danny Lineberry	ITS
Henry McLancaster	LCA
Lori Atkinson	[illegible]

Joint House and Senate Commerce Committee
Wednesday, February 23, 2011, 10:00 AM
643 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

Jerry Fralick – State Chief Info Officer
Secretary Keith Crisco – Department of Commerce

Adjournment

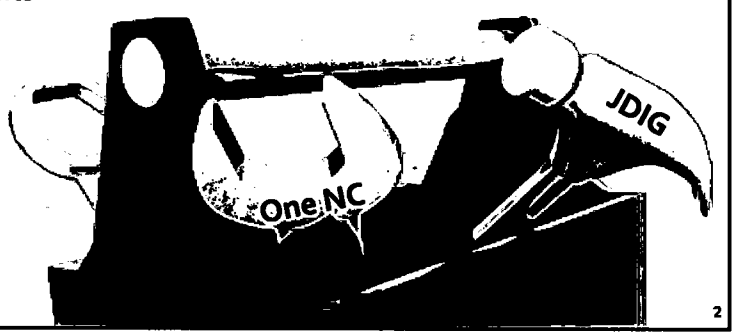
North Carolina Department of Commerce: JOBS, JOBS, JOBS

THRIVE *in* NORTH CAROLINA

2/23/2011

ECONOMIC DEVELOPMENT TOOLS

- Job Development Investment Grant
- One North Carolina Fund
- One North Carolina Small Business Fund
- Green Business Fund
- Job Maintenance & Capital Development Fund
- Tax Credits

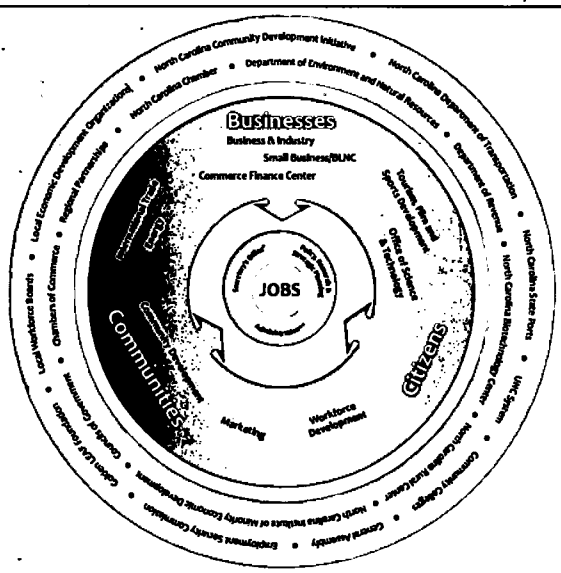


TOP FIVE BUDGET PRIORITIES

1. Maintain & Enhance economic development toolbox
2. Preserve & Create quality JOBS
3. Position North Carolina as a premier location
4. Promote prosperity of all communities and citizens
5. Pursue Government efficiency

THRIVE in NORTH CAROLINA

HOW COMMERCE CREATES JOBS



HOW COMMERCE CREATES JOBS

- Businesses
  - Growing & Attracting Companies
  - Attracting Visitors
  - Encouraging Innovation, Entrepreneurship, & Small Business
- Citizens
  - Developing North Carolina's Workforce
- Communities
  - Building Strong Communities
- Data-Driven Economic Development

THRIVE in NORTH CAROLINA

WHY CHOOSE NORTH CAROLINA?

North Carolina has the best business climate in America.

Our secret is simple.

When people thrive, business thrives.

THRIVE in NORTH CAROLINA

"North Carolina ... and a handful of other states are leading the nation's crawl out of the worst recession since the 1930s" September 21, 2010

USA TODAY

THRIVE in NORTH CAROLINA

7

ATTRACTING NEW COMPANIES

Capgemini
CONSULTING. TECHNOLOGY OUTSOURCING
Central States Manufacturing, Inc.
B&W
Empire Foods
Northeast Foods
fiserv.
GARMIN.
BD
CLEARWATER PAPER
facebook
Electrolux
NONNI'S
medicago
Nice Blends
Ameritox
Medication Monitoring Solutions
CONVERGYS
Outthinking Outdoing
WIPRO
Applying Thought
infocrossing
A Wipro Company
CAT
ACW TECHNOLOGY
Palziv
htc
AMERICAN EXPRESS
MAGNA
ABB
CITCO
THRIVE in NORTH CAROLINA

8

NORTH CAROLINA CONTINUES RECOVERY

Projects Assigned	↑	2%
Projects Announced	↑	5%
Jobs Announced	↑	11%
Capital Investment Announced	↑	11%
Existing Industries Visited	↑	20%

2010 vs. 2009

THRIVE NORTH CAROLINA

9

ECONOMIC DEVELOPMENT TOOLS 2005 to Present

THRIVE NORTH CAROLINA

10

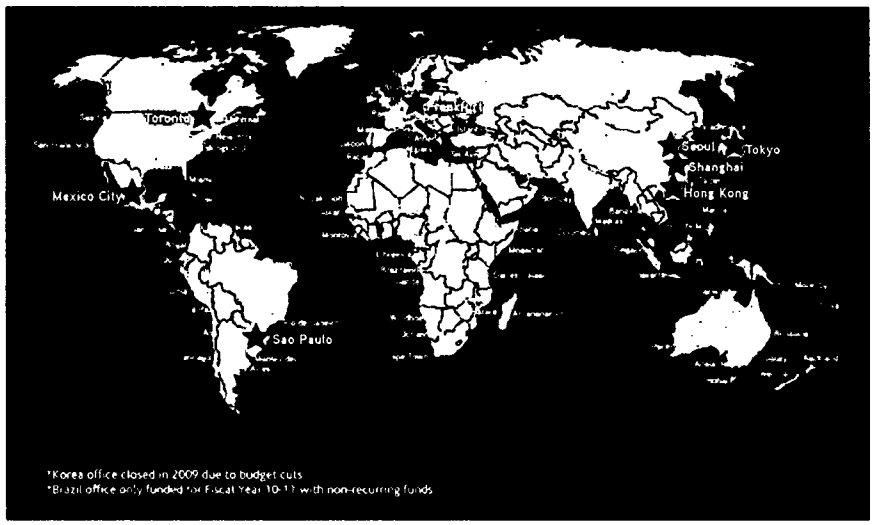
GROWING EXISTING BUSINESSES

HYDAC AVGOL CREE NOVARTIS EMERSON. NORTH CAROLINA Malt-O-Meal POLO RALPH LAUREN BAYER ABB Electrolux sas THE POWER TO KNOW. Talecris BIOTHERAPEUTICS CAT PAS BALDOR SIEMENS Continental TIMCO aviation services RESER'S FINE FOODS DRS TECHNOLOGIES IBM Husqvarna SPX WHERE IDEAS MEET INDUSTRY IR Ingersoll Rand BD redhat MasterBrand Nypro novo nordisk Stanley FURNITURE PROVIDENCIA ETHAN ALLEN CELGARD Flanders FOREMOST IN AIR FILTRATION AAR aarcorp.com

11

GLOBAL EXPORTS SUPPORT

350,000 NC JOBS and contribute $30 Billion to NC GDP



*Korea office closed in 2009 due to budget cuts
*Brazil office only funded for Fiscal Year 10-11 with non-recurring funds

12

GROWING SMALL BUSINESSES

Over 10,000 jobs created or retained and $5.26 in new tax revenue for each $1 of cost

one north carolina
Small Business Program

bl nc
Business Link North Carolina

CAN
Capital Access Network

Biz Boost
Steering North Carolina businesses toward a better future

north carolina
Green Business Fund

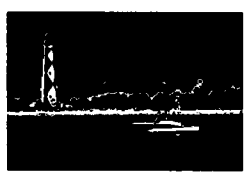
THRIVE in NORTH CAROLINA

13

TOURISM IS SMALL BUSINESS

North Carolina is the 6th most visited state

Every $1 spent on Statewide advertising generates $10 in State revenues and $7 in local revenues



Visitors :

- **Spent $15.6 Billion**
- **Generated 183,800 Direct Jobs**
- **Created $1.35 Billion in State & Local Taxes**

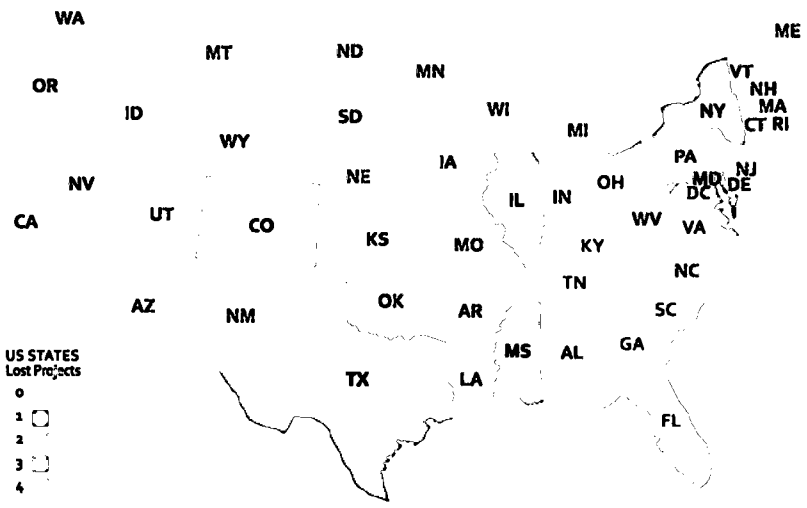
THRIVE in NORTH CAROLINA

14

EQUIPPING OUR WORKFORCE

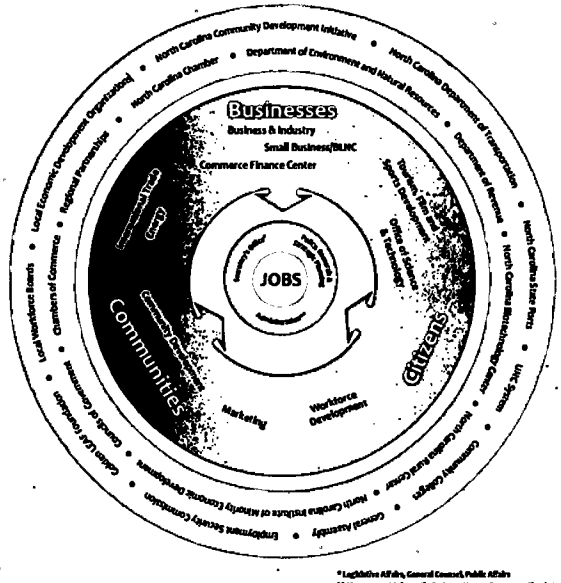
15

COMPETITION is FIERCE for JOB CREATION



16

HOW COMMERCE CREATES JOBS
No One Person Wins a Game



* Legislative Affairs, General Counsel, Public Affairs
** Management Information Systems, Human Resources, Fiscal Management

T H R I V E

in NORTH CAROLINA

GLOSSARY of TERMS

Job Development Investment Grant (JDIG)

A discretionary incentive program that provides a limited number of cash grants directly to new and expanding businesses that will provide economic benefits to the State are competitive with other locations, and need the grant to carry out the project in North Carolina. Grants are based on the job creation and investment commitment made by companies in their formal applications to the State prior to a location decision. Grant funds are disbursed annually to approved companies based on a percentage of withholding taxes paid by new employees, following satisfaction of performance criteria set out in grant agreements.

In addition, State law requires that, with respect to every grant made under the JDIG program, the Department of Commerce must conduct an analysis to determine whether the total benefits of the project outweigh the costs to the State, and a comprehensive model has been developed for this purpose. In addition to other statutory requirements, only grants that show a net State revenue benefit may be awarded.

A five member Economic Investment Committee (EIC) evaluates projects and makes decisions regarding JDIG awards, funding levels, grant period, and other terms of the grants. The EIC is authorized to award grants to be disbursed annually for a period of up to 12 years, ranging from 10 to 75 percent of the withholdings associated with eligible positions created by a company over a specified period of time. For projects located in Tier 2 counties, 15 percent of the total JDIG grant is transferred to the state's **Utility Account** to fund infrastructure projects in the state's economically distressed counties. In Tier 3 counties, 25 percent of the total JDIG grant is transferred to the **Utility Account**.

The JDIG program is subject to a legislative cap on grants made by the EIC in a given year, based on the cumulative financial impact of those grants in any future grant year. Up to 25 grants can be made annually. The maximum amount of total liability for grants provided for in agreements entered into in any single calendar year may not exceed $15 million. The amount of a grant associated with any specific position may not exceed $6,500 in any year. Currently, the authority of the EIC to enter into new agreements expires January 1, 2016.

One North Carolina Fund (One NC)

Nonrecurring appropriations made available to the Governor as a flexible and discretionary tool allowing North Carolina to respond quickly to enable job creation and/or retention for projects competitive with other locations. Awards are based on jobs created, economic impact of the project, the importance of the project to the state, quality of industry, and environmental impact.

Awards are allocated to local units of government as part of a negotiated challenge grant. Local governments are required to match the One North Carolina award with cash, fee waivers, in-kind services, donations of land, building or other assets, or provision of infrastructure.

For a company to be considered for a grant, the company must agree to meet or exceed 100% of the average county wage. Funds allocated through One North Carolina are used for:

- Installing or purchasing equipment
- Structural repairs, improvements, or renovations of existing buildings to be used for expansion
- Construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines

Industrial Development Fund (IDF)

Provides grants and loans for infrastructure development in the counties designated as Tier 1 or Tier 2 under G.S. 143B-437.08. Eligible units of local government may apply for the funds in conjunction with a company that commits to create new jobs or retain existing jobs in North Carolina. To qualify, companies must meet the same eligibility requirements as those outlined in the Article 3J Tax Credits for Growing Businesses.

Funding is based on the availability of monies and the merits of a project. IDF grants and loans for any one project cannot exceed a total of $10,000 per new job created or current job retained up to a maximum of $500,000 per project. Grants may be awarded to local governments for infrastructure improvements that are publicly owned and maintained including construction or improvement of water, sewer, gas, rail and electrical utility systems. Loans with a 4 percent fixed interest rate may be awarded to the project business – through the unit of local government applicant – for investments in privately owned or maintained assets such as the purchase of machinery and equipment, or building renovations. IDF loan funds may not be used to acquire land or buildings, or to construct new buildings. All IDF loans must be made in participation with a North Carolina bank that originates 50 percent of the loan, and shares equal risk and collateral with the unit of local government.

In the 25 most distressed counties, there is no local match requirement. Federal or state grant funds may not be used to meet the local match requirement, with the exception of funds granted through the N.C. Rural Economic Development Center.

Units of local government in the 80 most distressed counties may apply for utility account funding. Most requirements of the utility account are the same as the IDF. However, as there is no job commitment requirement, it is not necessary to apply for the funds in conjunction with a company. The applicant must demonstrate the project is expected to lead to job creation in eligible industries in the near future. No local match is required for utility account funding.

Job Maintenance & Capital Development Fund (JMAC)

Provides a limited number of grants to businesses located in Development Tier 1 counties, where the business has at least (1) 2,000 employees, and invests at least $200 million in capital improvements, or (2) 320 employees, and invests at least $65 million in capital improvements to convert its manufacturing process to change the product it manufactures.

The program is intended to stimulate economic activity and provide benefits to the citizens of North Carolina by encouraging retention of significant numbers of high-paying, high-quality jobs and large-scale capital investment that will modernize processes and provide more globally competitive products, while enlarging the overall tax base and increasing revenues to the State and its political subdivisions.

Community Development Block Grant for Economic Development (CDBG-ED)

Program provides grants for infrastructure development. Funds available are based on an annual federal allocation to North Carolina from the U.S. Department of Housing and Urban Development and may be applied for by a local government for economic development projects. Private businesses cannot apply directly for this funding but instead work collaboratively with a local government and receive a loan or grant through the local government for the project.

Funded projects lead to the creation or retention of jobs. Economic development category projects involve assistance for public facilities needed to serve the target business.

The Small Business and Technology Development Center (SBTDC)

Administered by NC State University on behalf of the University of North Carolina System and operated in partnership with the US Small Business Administration. The SBTDC is North Carolina's leading resource for growing and developing businesses. Highly skilled professionals generate value for business, government, and university leaders by: Providing small business expertise, offering training and education for business startups, assisting communities and economic developers, leveraging university resources statewide, maintaining strong partnerships, and restoring statewide stability.

Biz Boost

As a part of the SBTDC, Biz Boost is a unique and proactive approach to workforce development that focuses on retaining existing jobs and supplements the traditional strategy of worker training and retraining. The NC Commission on Workforce Development is committing to the retention of existing jobs through the allocation of additional resources and technical assistance to businesses that will help them sustain and grow their operations during this downturn. Traditionally, Workforce Investment Act (WIA) funding has been used solely for training of incumbent workers and retraining of displaced workers. Through Biz Boost, the NC Commission of Workforce Development has developed an innovative approach to job loss aversion.

Business Link North Carolina (BLNC)

An extensive network of experts offering services to North Carolina businesses: 1-800-228-8443.

One North Carolina Small Business Fund

The One North Carolina SBIR/STTR Phase I Incentive Program reimburses qualified North Carolina firms for a portion of the costs incurred in preparing and submitting Phase I proposals for the federal SBIR and STTR programs. The One North Carolina SBIR/STTR Phase I Matching Funds Program is designed to award matching funds to North Carolina firms who have been awarded a federal SBIR or STTR Phase I award. The federal SBIR and STTR programs are designed to help small businesses commercialize their innovative technologies.

The North Carolina incentive program and the matching program comprise The One North Carolina Small Business Program, which is administered by the North Carolina Board of Science and Technology.

Green Business Fund

Created in 2007, eligible businesses with fewer than 100 employees may apply for the maximum grant amount of $500,000. The Green Business Fund is currently funded with American Recovery and Reinvestment Act through a federal Department of Energy program known as the State Energy Program. 2011 Recipients will be focused on commercially available energy efficiency and renewable energy projects. The program focuses on assisting business engaged in the areas of:

- Development of the Biofuels Industry in the State
- Development of the Green Building Industry in the State
- Attraction and leverage of private sector investments and entrepreneurial growth in environmentally conscious clean technology and renewable energy products and businesses
- Certified Eco-Industrial Park has priority over a comparable project that is not located in a certified park - N.C.§143B-437.08.

North Carolina Capital Access Network (NCCAN)

The Capital Access Network (CAN) is a state-wide initiative, designed to help qualified small and mid-size businesses secure the necessary financing to maintain and grow their business. CAN facilitates the process of accessing government loan guarantee programs for both businesses and participating banks – increasing the number of loans made to businesses in North Carolina.

Main Street Solutions

The purpose of the Main Street Solutions Fund program is to provide maximum support to small businesses in designated micropolitans located in Tier 2 and Tier 3 counties and in designated North Carolina Main Street communities. The Program is intended to strengthen the economy of the municipality and its role as a regional growth and employment hub. This is accomplished by leveraging the state's resources for small business development, spurring private investment, and by providing economic development planning assistance and coordinated grant support.
The grants will assist planning agencies and small businesses with efforts to revitalize downtowns by creating jobs, funding infrastructure improvements, rehabilitating buildings and finding other growth opportunities.

North Carolina Department of Commerce

Economic Development Tools by County, Award Type, and Project
2005 to Present

Alamance
JDIG
Honda Aero Inc.
One NC
Continental Components
Kayser-Roth Corp.
Nypro Carolina
Sandvik Inc.
Alexander
CDBG-ED
Craftmaster Furn./Paladin Ind.
IDF
Paragon Films
One NC
Caye Home Furnishings LLC
Alleghany
CDBG-ED
Tri-State
TruLine Truss
Anson
CDBG-ED
Hornwood
Incubator Grant
One NC
UFS Holdings-Premiere Fibers Inc.
Yale Industrial Products Inc.
Ashe
CDBG-ED
ARC
Incubator Grant
Trimurthi, Inc
JDIG
Smiths Aerospace Components Inc.
One NC
Gates Corporation
Avery
CDBG-ED
Lowe's

Beaufort
CDBG-ED
BHC, Inc.
Brooks Boatworks
Carver Machine Works
Flanders Filters
Southtech Plastics
IDF
Carver Machine Works
Southtech Plastics
JDIG
Fountain Powerboats Inc.
One NC
Brooks Boatworks
Carver Machine Works
Fountain Powerboats
Hi-Tide Sales
Impressions Marketing Group
Impressions Marketing Group Inc.
PAS
Bertie
CDBG-ED
Bertie Health
IDF
A2A Living Oils
Bladen
CDBG-ED
Incubator Grant
Vulcan Amps/Lake Belle Amie Winery
IDF
Millworks Specialties
One NC
DuPont
DuPont Tedlar
Dynapar Corp.
Flanders Filters
Brunswick
JDIG
Brunswick Corporation
One NC
DAK Americas

North Carolina Department of Commerce

Economic Development Tools by County, Award Type, and Project
2005 to Present

Buncombe
JDIG
Novo Nordisk
Volvo Construction Equipment
One NC
Arvato
Baldor Electric Co.
Borg Warner Turbo Systems
Ingles Markets
Nypro
Reich GmbH
Smiths Aerospace
Thermo Fisher Scientific
Burke
CDBG-ED
Kleen-Tech, Inc.
Maple Springs
Tailored Chemical
JDIG
Sypris Technologies, Inc.
One NC
Cherokee Manufacturing
Continental Teves Inc.
Ice River Springs
Kellex Corp.
Kleen Tech Inc.
Maple Springs Laundry Inc.
Marves Industries LLC
Valdese Weavers
VSA LLC

Cabarrus
JDIG
Celgard LLC
One NC
DIRT MotorSports
DNP IMS
LKN Communications
Motor Racing Network
Caldwell
CDBG-ED
New River Lumber
VX Aerospace
IDF
Merchants Distributors, Inc.
Vantage Foods
JDIG
Merchants Distributors Inc.
Madras Integrated (an entity of Google Inc)
Magna Composites LLC
One NC
Adhezion Biomedical LLC
Advanced Textile Solutions Inc.
Broyhill Furniture Industries Inc.
Galexe Pharma Science
Sattler AG
Tasz
Vantage Foods
Camden
One NC
Blackwater USA
Caswell
CDBG-ED
Caswell Health
NorAg Technology
IDF
NorAg Technologies
One NC
Enbasa USA

Economic Development Tools by County, Award Type, and Project
2005 to Present

Catawba
CDBG-ED
Catawba Valley Living
Ideaitalia Furniture
Incubator
Queen Transportation
Target
IDF
Apple, Inc
Target Corporation
JDIG
Magna Composites LLC
Sutter Street Manufacturing
Target Corporation
One NC
Baker Knapp and Tubbs
Covation LLC
Ethan Allen Operations Inc.
Fiserv Inc.
Pierre Foods Inc.
Turbotec Products Inc.
Chatham
CDBG-ED
Basic Machinery
Southern Supreme
One NC
ATC Panels
Uniboard Canada Inc.
Cherokee
IDF
Snap-On Tools
One NC
Snap-on Inc.
Chowan
CDBG-ED
Regulator Marine, Inc
Wharf Landing, LLC
One NC
Colony Tire Corp
Millennium Marine
MiTek Industries Inc.

Cleveland
CDBG-ED
Clearwater Paper
Hallelujah Acres, Inc
Ingles Markets, Inc
JDIG
Chris-Craft Corp.
Clearwater Paper Corp.
Indian Motorcycle
One NC
Baldor Electric Co.
Chris-Craft Corporation
Clearwater Paper
FAS Controls
Greenheck Fan Corp.
Indian Motorcycle Company
Kitchen Ventilation Systems LLC
PPG Industries FiberGlass Products Inc.
Solaris Industries Inc.
Telerx
Ultra Machine & Fabrication
Columbus
One NC
Hart & Cooley
Metal Spinners Inc.
Top Tobacco
Craven
JDIG
Brunswick Corporation
BSH Home Appliances Corporation
One NC
Brunswick Corporation
Carolina Technical Plastics

North Carolina Department of Commerce

Economic Development Tools by County, Award Type, and Project
2005 to Present

Davidson
CDBG-ED
Moran Foods
Morton Metalcraft
TIMCO Aerosystems
IDF
RCR Enterprises, Inc.
JDIG
Arneg LLC
ASCO Power Technologies
TIMCO Aerosystems LLC
One NC
Imaflex
Save-A-Lot
TIMCO
United Furniture Industries NC LLC
Valendrawers
Vitacost.com Inc.
Davie
CDBG-ED
Amarr Garage Door
Crestwood Farms
Cycle Group
Dewey's Bakery
JP Green Milling
One NC
Amarr
Avgol America
Townsends Inc.
Duplin
IDF
Case Farms, Inc.
One NC
Menlo Worldwide
Precision Hydraulic Cylinders

Durham
JDIG
American Institute of Certified Public Accountants
BD (Becton, Dickinson and Company)
Credit Suisse
Cree Inc.
EMC Corp.
IBM Lender Business Process Services Inc
IEM
Quintiles Transnational Corporation
Stiefel Laboratories
One NC
ACW Technology Inc.
Eisai
IEM
Medicago USA
Parata
Quintiles
United Therapeutics
Edgecombe
CDBG-ED
Jade Apparel
Keihin CST, Inc
Sara Lee
IDF
Spongex, LLC
JDIG
Headway Corporate Resources Inc.
One NC
Hawaiian Fiberglass Pools
HC Composites LLC

Economic Development Tools by County, Award Type, and Project
2005 to Present

Forsyth
JDIG
Caterpillar Inc.
One NC
Caterpillar Inc.
Exhibit Works
Hayward Pool Products
Ken Garner Manufacturing
Lowe's Companies Inc
NS Aviation
PepsiCo
Piedmont Aviation Component Services LLC
The Clearing House Payments Co.
TurboCare Inc.
Franklin
CDBG-ED
Palziv North America
One NC
Palziv North America
Gaston
CDBG-ED
National Gypsum
IDF
Project CASO/National Gypsum
One NC
Bud Antle (Dole Foods)
Pharr Yarns LLC
Wilbert Plastic Services
Graham
One NC
Stanley Furniture
Granville
CDBG-ED
Shalag Industries
One NC
Dill Air Controls Products
Shalag Industries Ltd.
Greene
One NC
YamCo

Guilford
JDIG
Honda Aircraft Company Inc.
Mack Trucks Inc.
Ralph Lauren Media
RF Micro Devices
Skybus Airlines Inc.
TransTech Pharma
One NC
Baltek Inc.
Carolina Precision Plastics
Comair Inc
Laboratory Corp. of America Holdings Inc.
Legacy Paddlesports
Lodging By Liberty
Precor Inc.
Transportation Systems Solutions
Halifax
CDBG-ED
R R Entertainment District
Reser's Fine Foods
Reser's Foods
Window Home Fashions
IDF
FASTA, Inc
United Salvage and Auto
One NC
AirBoss of America
Empire Foods Inc.
FASTA Inc.
Halifax Linen
Reser's Fine Foods
Harnett
IDF
Carolina Precast Water Line
One NC
Boon Edam Tomsed
Henderson
JDIG
Continental Teves
One NC
Elkamet
Raflatac

Economic Development Tools by County, Award Type, and Project
2005 to Present

Hertford
IDF
Perdue Agribusiness
One NC
Enviva
Hoke
CDBG-ED
Alpla, Inc.
Clean Burn Fuels LLC
Pennsylvania Transformer
IDF
Burlington Industries
One NC
Alpla Inc.
Burlington WorldWide
Pennsylvania Transformer Technology Inc.
Unillever United States
Iredell
CDBG-ED
Pratt Industries
Providencia USA
JDIG
RF Micro Devices
One NC
BSI Balance Systems
Canac Kitchens
Polymer Group Inc
Providencia USA
Talon Systems Inc.
Jackson
One NC
Stonewall Packaging LLC

Johnston
CDBG-ED
Custom Assemblies, Inc.
Northeast Foods
SYSCO
JDIG
Novo Nordisk
Talecris Biotherapeutics
One NC
Becton, Dickinson and Company (BD)
Environ OPW
Northeast Foods Inc.
Novo Nordisk
Talecris
TT Electronics (AB Automotive)
Jones
CDBG-ED
Coastal Beverage Co.
One NC
Defense Holdings Inc
Lee
JDIG
Caterpillar Inc.
One NC
Caterpillar Inc.
Challenge Printing Company
Frontier Spinning
System Plast

Economic Development Tools by County, Award Type, and Project
2005 to Present

Lenoir
CDBG-ED
Incubator Grant
Sanderson Farms
IDF
Smithfield Packing
Spirit AeroSystems
West Pharmaceuticals
JDIG
Reliance Industries USA
Spirit AeroSystems Inc.
One NC
AG Machining
Commerce Overseas Corp.
Dopaco Inc.
DuPont Sorona
Electrolux
Field Controls
MasterBrand Cabinets Inc.
Premier Trailer Inc
Spatial Integrated Systems
Spirit AeroSystems
West Pharmaceutical
Workhorse Aviation Mfg LLC

Lincoln
One NC
HYDAC Technology
SABO USA
Martin
CDBG-ED
Syfan
One NC
Ann's House of Nuts
Quintiles
McDowell
CDBG-ED
RDM Electronics
JDIG
Cobia Boats
PRC Industries Inc
One NC
Baldor Electric Co.
Beaver Paper Co.
Carriage House Door Co.
Edwards Wood Products Inc./Woodlawn
Ethan Allen Operations Inc.
Janesville Acoustics
Morganton Pressure Vessels
North Cove Springs
Spectrum Mills LLC
Superior Machine Company of S.C. Inc.

North Carolina Department of Commerce

Economic Development Tools by County, Award Type, and Project
2005 to Present

Mecklenburg
CDBG-ED
Prairie Packaging
JDIG
ABB Inc.
BAE
Capgemini
Celgard LLC
Citco Fund Services (USA) Inc.
Electrolux
GMAC Financial Services
Hewitt Associates
Hewitt Associates LLC*
Husqvarna
IBM Lender Business Process Services
INC Research Inc.
Loparex LLC
Maersk Inc.
Newell Rubbermaid
Pharmaceutical Research Associates International
Premier Inc.
Siemens Energy Inc.
SPX
Tessera Technologies Inc.
The Shaw Group
Time Warner Entertainment
Toshiba America Nuclear Energy Corp.
Zenta Mortgage Services
One NC
ABB Inc.
Clariant
Electrolux
Gerdau AmeriSteel
Microban
Neighborhood Assistance Corp. of America
Pulte Mortgage
Red F Marketing
SAERTEX
SCR-Tech LLC
Sencera International Corp.
Shutterfly Inc.
Siemens
Speed Channel
SPX

Mitchell
One NC
Genesis Furniture
New Buck Corp.
Montgomery
CDBG-ED
Mountaire Farms
IDF
Tex Racing
One NC
Frontier Logistics
Moore
CDBG-ED
ATEX Technologies
Corneal Science
One NC
American Growler
Nash
CDBG-ED
SePRO
IDF
Amerlink
JDIG
LS Tractor USA LLC
One NC
American Food Resources
Amerlink
Eagle Press
Hanes Geo-Components
New Standard Corp
R.W. & Able
New Hanover
JDIG
GE Hitachi Nuclear Energy Americas
General Electric
INC Research Inc.
Pharmaceutical Research Associates International
One NC
GE Hitachi
General Electric
Titan

North Carolina Department of Commerce

Economic Development Tools by County, Award Type, and Project
2005 to Present

Northampton
CDBG-ED
Hampton Farms
IDF
Fineline Ind./Econ Asst. Loan
JDIG
Lotus Engineering
Pasquotank
CDBG-ED
DRS Technologies
Gateway Bank
IDF
DRS Technical Services, Inc.
Tamsco
JDIG
DRS Technical Services Inc.
One NC
AMARK Corp.
TCOM L.P.
Pender
CDBG-ED
Pender Packing
Shell Building Loan
Person
JDIG
Eaton Corporation
Force Protection Inc.
One NC
CertainTeed Gypsum Inc
Force Protection
North American Aerodynamics Inc.
P&A Industrial Fabrications
Pitt
One NC
CMI Plastics
DSM Dyneema
Harper Brush Works
Metrics Inc
Paper Pak

Randolph
CDBG-ED
Allen Precision
Malt-O-Meal
Trinity Furniture
United Furniture
IDF
Trinity Furniture
JDIG
Malt-O-Meal Company
One NC
Americhem
Ernie Green Industries
Hubbell Industrial Controls
Kennametal Inc.
Malt-O-Meal
StarPet Inc.
Timken Co.
Richmond
CDBG-ED
Perdue Farms, Inc.
Plastek Industries
Ritz-Craft
Viking Pools, Inc
von Drehle Cordova
IDF
Impact Plastics
JDIG
Narricot Industries' BST Safety Textiles
Plastek Industries
One NC
APG-Meridian
Global Packaging
Knit-Rite Inc.
Narricot (BST Safety Textiles)
Plastek
Richmond Specialty Yarns LLC

Economic Development Tools by County, Award Type, and Project
2005 to Present

Robeson
CDBG-ED
Campbell Soup
Caring Touch Health
Harger Lightning
Mountaire Farms
Native Angels
Porter Scientific
One NC
Bozco TV
Campbell Soup Co.
Comark Building Systems
Harger Lightning & Grounding
Mountaire Farms Inc.
Rempac Foam Corp.
Tredagar Film Products
Rockingham
CDBG-ED
Bridgestone Tire
Frontier Spinning Mills
McMichael Mills
SANS Fibers
JDIG
Loparex LLC
One NC
Albaad USA Inc.
Alcan Inc.
Ameri-Kart
Bridgestone Aircraft Tire (USA) Inc
Commonwealth Brands Inc.
General Tobacco
Global Textile Alliance
Innofa
SANS Technical Fibers LLC
TigerTek
WhiteRidge Plastics LLC

Rowan
CDBG-ED
Altec Industries
RDH Tire
Sunshine Manu.
IDF
Altec Industries
JDIG
Magna Composites LLC
PGT Industries Inc.
One NC
Boral Composites Inc.
Henkel Corp.
Norandal USA
Sustainable Textile Group LLC
Tuscarora Yarns
Wind Tunnel eXtreme LLC
Rutherford
CDBG-ED
ARC
RC Motorsports
Thieman Metals
White Oak
One NC
C.M.I Enterprises Inc
Continental AFA
EcoResin
Plastic Packaging
Simeus Foods
Thieman Metal Technology
Watts
Sampson
One NC
Alludisc
Scotland
CDBG-ED
Kordsa USA
One NC
Kordsa USA
Nature's Earth Products Inc.
Scotland/Henderson
One NC
ArvinMeritor

North Carolina Department of Commerce

Economic Development Tools by County, Award Type, and Project
2005 to Present

Stanly
CDBG-ED
Bio-Energy Conversion
Galloway Wholesale Tire
Hudson Plastics
Norwood Manufacturing
United Protective Technologies
IDF
Chicago Tube & Iron
One NC
Chicago Tube & Iron
ConverPro
Michelin North America Inc.
Stanly/Montgomery
One NC
International Automotive Components Group
Stokes
One NC
KobeWieland
Surry
CDBG-ED
Bottomley Farms
One NC
Central States Manufacturing Inc.
CK Technologies, LLC
Gerard Bakery
Harvest Time Bread of North Carolina LLC
Ottenweller
Poli-Twine
Transylvania
CDBG-ED
Gaia Herbs
Incubator Grant
One NC
Excelsior Packaging
Union
JDIG
Carolina Classifieds.com LLC
Turbomeca Manufacturing Inc.
One NC
ATI Allvac
BAE Tensylon High Performance Materials
Darnel Inc.
Greiner Bio-One North America Inc.
Turbomecca

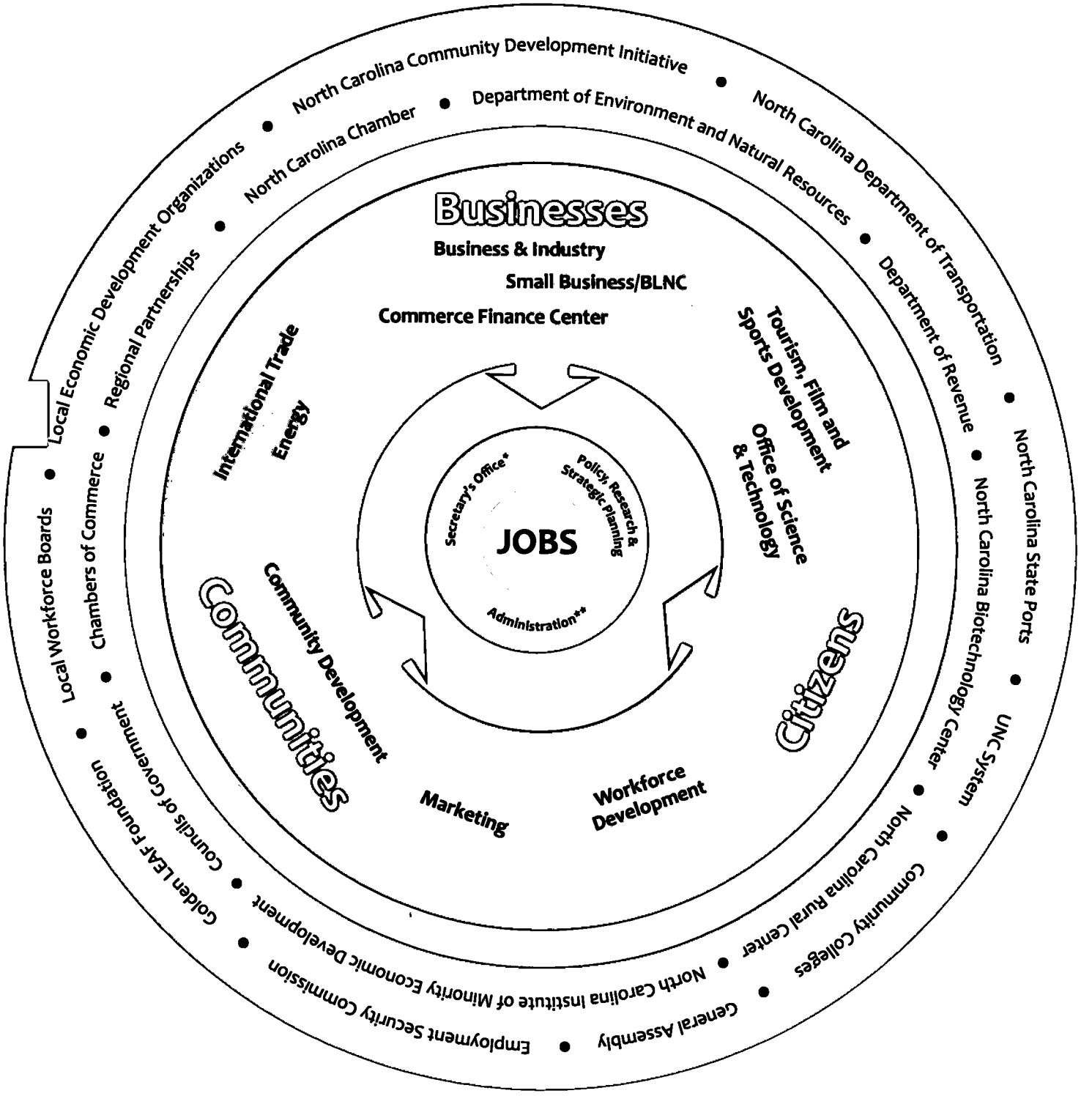
Vance
IDF
Carolina Country Mfg.
Profilform II
One NC
Florida Marine Tanks
Vescom America
Wake
JDIG
Bayer CropScience LP
Deutsche Bank AG
Fidelity Investments
GlaxoSmithKline
HCL America
Headway Corporate Resources Inc.
INC Research Inc.
Lenovo (United States) Inc.
MeadWestvaco Corporation
Network Appliance
Novartis
Novartis Vaccines and Diagnostics
Pharmaceutical Research Associates International
Red Hat
Siemens
Siemens Medical Solutions USA Inc
One NC
Fidelity Investments
GlaxoSmithKline
Healthways
Lenovo (United States) Inc
Nomacorc
Novartis Vaccines and Diagnostics
Optimal Technologies US Inc.
Ply Gem
Wayne
JDIG
AAR Manufacturing Inc.
Andrew Corporation
One NC
AAR Manufacturing Inc.
Reuel Inc.
Triangle Suspension Systems Inc.

Economic Development Tools by County, Award Type, and Project
2005 to Present

Wilkes
CDBG-ED
Powersports Grafx
Tyson Foods
IDF
MX Aircraft
Wilson
CDBG-ED
Incubator Grant
IDF
Absolute Plastics
JDIG
BD (Becton, Dickinson and Company)
One NC
Absolute Plastics
Bruce Food Corporation
IWCO Direct
Kidde Aerospace
McMullen Inc
Sandoz
TYM-USA
Yadkin
CDBG-ED
ARC
Austin Enclosures
One NC
Nonni's Food Co.
Yancey
CDBG-ED
Altec Industries
ARC
Incubator Grant

NORTH CAROLINA
Department of Commerce

How Commerce Creates Jobs



* Legislative Affairs, General Counsel, Public Affairs

** Management Informatin Systems, Human Resources, Fiscal Management

NORTH CAROLINA
Department of Commerce

- **No. 1 Best Business Climate, nine out of 10 years**
  - SITE SELECTION MAGAZINE, 2010
- **No. 2 Best State for Business**
  - CHIEF EXECUTIVE MAGAZINE, 2010
- **No. 3 Best State for Business**
  - FORBES MAGAZINE, 2010
- **No. 4 America's Top States for Business survey**
  - CNBC, 2010
- **No. 4 Economic Growth Potential**
  - BUSINESS FACILITIES MAGAZINE, 2010
- **58,000 jobs** have been announced in the last two years with **$12.5 Billion** in investment.
- North Carolina will grow by being able to adapt to **ever-changing economic conditions.**
- North Carolina's economic development infrastructure has been nationally recognized as **one of the best in the country.**
- Many economists believe that **strong exports** will be the quickest way out of the current economic condition.
- Exports support nearly **350,000 jobs** in North Carolina and contribute more than **$30 Billion** to the State's economy.
- **Biz Boost** is a successful layoff aversion- job retention project statewide.
- In this current economic climate, the **competition for jobs** continues to escalate.
- More than **60%** of discretionary grant awards go to help **grow existing businesses** in North Carolina.

Please visit the following site for more information:
http://www.nccommerce.com/en/BusinessServices/LocateYourBusiness/SiteSelectorsToolkit/accolades.htm

Committee Sergeants at Arms

NAME OF COMMITTEE Commerce

DATE: 2-23-11 **Room:** 643

House Sgt-At Arms:

1. **Name:** Garland Shepheard
2. **Name:** Reagan Sills
3. **Name:** Martha Farmer
4. **Name:** Todd Backelar
5. **Name:**

Senate Sgt-At Arms:

1. **Name:** Ronnie SPANN
2. **Name:** Billy Fritscher
3. **Name:** George Robinson
4. **Name:**
5. **Name:**

PAGES ATTENDING

COMMITTEE: Joint: Commerce **ROOM:** 643

DATE: 2-23 **TIME:** 10 AM

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

Page Name	Hometown	Sponsoring Senator
1 Cameron Chauvaux	Cary	P. Berger
2		
3		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Jt. House v Senate Commerce — 2/23/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Hecknea	Clerk, Lytle & Geduldig
Mike Okun	NCSaltHfl.com
Paul Stam	NCBA
Drew Reitz	Raleigh Chamber
Daniel Baum	Troutman Sanders
Joe Lanier	Nelson Mullins
John Shaw	Sierra Club - Carolina Coast
Allison Waller	Charlotte Chamber
Michelle Frazier	MFS
	RAMC + others
Debbie Hamrick	NC Farm Bureau

VISITOR REGISTRATION SHEET

Jt. House & Senate Commerce — 2/23/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Floyd Thomas	Adobe Systems
Chris Spencer	Cisco Systems
John Mannick	CSC
W. Gordon Culpepper	Visitor
Will Culpepper	MVA
Abigail Hammock	NCIC
Jeremy Black	Union Power Cooperative
David Gross	Union Power Coop
Eddie Greene	AB Council
Randy Parrett	Oracle
Emily Grimm	MWC

VISITOR REGISTRATION SHEET

Jt. House + Senate Commerce — 2/23/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara L Candler	BBCW
Katie Stanley	Commerce
Rita Harris	Commerce Dept
Andrew Meehan	Capstrat
Preston Howard	MCIC
Cody Thomas	NCAR
Jessi Hayes	NCHRA
John Goodman	SC Chamber
Tim Crowley	Commerce
Drew Saunders	Electric Cities

VISITOR REGISTRATION SHEET

Jt. House & Senate Commerce — 2/23/11

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Philip Kahan-MD	guest of Senator Vaughan
John Hammontree	AT&T Raleigh, NC
Teri Lewis	ACS
Chris Valaer	Valaer Group, LLC
Tim Kent	NC Beer & Wine Wholesalers
John Merritt	MUC / IC
Danny Lineberry	ITS
Chris Agnew	Dept. of Admin
Signature illegible	illegible
Greg Thompson	NFIB
Ann Henley	Electricities

VISITOR REGISTRATION SHEET

Jt. House and Senate Commerce — 2/23/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hannah Gutcliff	N.C.B.A.
BRUCE THOMPSON	PARKER POE
Cameron Johnson	
Mia Bailey	Electricities of NC, Inc.
Pam Melton	CenturyLink
	City
	Harrell & Assoc.

SENATE COMMERCE COMMITTEE
Tuesday, March 15, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 15, 2011 in room 1027 of the Legislative Building. Jessica Lee of Pineville, John Scott of Holly Springs, and Zachary Tharrington of Elm City served as pages. Twenty-six members of the committee were present. Senator Brown presided as chair.

S.B. 75 – Promote Electricity Demand Reduction

Senator Hartsell was recognized to explain the bill. Senator Vaughan moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS changes the phrase "electric public utility" to electric power supplier" in the definition of what constitutes "electricity demand reduction". This makes it clear that electricity demand reduction applies to electric membership corporations and municipalities as well as public utilities. Kristen Coracini, an Energy Policy Specialist with the Environmental Defense Fund, was recognized. She stated that she appreciated the intent of the bill, but felt that it was inadequately drafted. Senator Rucho moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 91 – Repeal e-NC Sunset

Senator Hartsell was recognized to explain the bill which would repeal the sunset provision pertaining to the e-NC Authority. Senator Rucho was recognized to offer an amendment which would extend the sunset of the Authority. Jane Smith Patterson, the Executive Director of the e-NC Authority, was recognized to answer questions. Senator Hunt moved to adopt the amendment and the motion carried. Senator McKissick moved for a favorable report with a referral to the Finance Committee. The motion carried. A copy of the bill, the summary, and the amendment is attached.

S.B. 194 – Electric Vehicle Incentives

Senator Meredith was recognized to explain the bill which defines 'plug-in electric vehicle', authorizes those vehicles to operate in HOV lanes, and exempts them from the emissions inspection requirement. Senator Davis questioned the manufacturer's specifications modification section of the bill. He offered an amendment to clarify the modification section to allow modifications that improve the safety or efficiency of the car. He moved for its adoption and the motion carried. Thomas Moore, a lobbyist for General Motors was recognized for comments and stated that he was not in favor of the modification amendment. Senator McKissick moved for a favorable report of the bill as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

S.B. 146 – State Shrimp Festival – Sneads Ferry

Senator Apodaca chaired the remainder of the committee, so Senator Brown could be recognized to explain S.B. 146. The bill would make the Sneads Ferry Shrimp Festival the official State shrimp festival. Senator Graham moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 11:41 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, March 15, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 75	Promote Electricity Demand Reduction.	Sen. Hartsell
SB 91	Repeal e-NC Sunset.	Sen. Hartsell
SB 146	State Shrimp Festival-Sneads Ferry.	Sen. Brown
SB 194	Electric Vehicle Incentives.	Sen. Apodaca Sen. Meredith

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 15, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 75	Promote Electricity Demand Reduction.	Senator Hartsell
SB 91	Repeal e-NC Sunset.	Senator Hartsell
SB 146	State Shrimp Festival-Sneads Ferry.	Senator Brown
SB 194	Electric Vehicle Incentives.	Senator Apodaca Senator Meredith

Senator Harry Brown, Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, March 15, 2011

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

FAVORABLE

S.B. **146** State Shrimp Festival-Sneads Ferry.
Sequential Referral: None
Recommended Referral: None

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

S.B. **75** Promote Electricity Demand Reduction.
Draft Number: 75065
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **91** Repeal e-NC Sunset.
Draft Number: 75066
Sequential Referral: None
Recommended Referral: Finance
Long Title Amended: Yes

S.B. **194** Electric Vehicle Incentives.
Draft Number: 85095
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

S75 – Sen. Hartsell
S91 – Sen. Hartsell
S146 – Sen. Brown
S194 – Sen. Apodaca or Sen. Meredith

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 75
PROPOSED COMMITTEE SUBSTITUTE S75-CSRC-8 [v.1]

3/14/2011 4:06:28 PM

Short Title: Promote Electricity Demand Reduction. (Public)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE USE OF ELECTRICITY DEMAND REDUCTION TO SATISFY RENEWABLE ENERGY PORTFOLIO STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8(a) is amended by adding a new subdivision to read:

"(3a) "Electricity demand reduction" means a measurable reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric power supplier and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of standards."

SECTION 2. G.S. 62-133.8(b) reads as rewritten:

"(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

(1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	**REPS Requirement**
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.

c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements

of this section through savings due to implementation of energy efficiency measures.

d. Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.

e. Purchase renewable energy certificates derived from in-State or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

g. Electricity demand reduction."

SECTION 3. G.S. 62-133.8(c) reads as rewritten:

"(c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Membership Corporations and Municipalities. –

(1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	**REPS Requirement**
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.

c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.

d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.

e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

g. Electricity demand reduction."

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

SENATE BILL 75:
Promote Electricity Demand Reduction

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 14, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S75-CSRC-8		

SUMMARY: ***SB 75 amends subsections of G.S. 62-133.8 as enacted by S.L. 2007-397 (SB 3). SB 75 adds a new definition, "electricity demand reduction," and permits "electricity demand reduction" to be used to satisfy the "renewable energy and energy efficiency standards" (REPS) imposed by S.L. 2007-397.***

The Proposed Committee Substitute changes the phrase "electric public utility" to "electric power supplier" in the definition of what constitutes "electricity demand reduction". This makes it clear that electricity demand reduction applies to electric membership corporations and municipalities as well as public utilities.

CURRENT LAW: S.L. 2007-397 (SB 3) is a comprehensive piece of energy related legislation enacted in 2007. Among its many provisions it enacted G.S. 62-133.8, which sets out the specific REPS requirements to be achieved by public utilities, electric cooperatives, and electricity-supplying municipalities and specifies the way these requirements may be met. It also provides definitions for demand-side management and energy efficiency measure which are as follows:

""Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods." "Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load."

""Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. "Energy efficiency measure" does not include demand-side management."

Public utilities may not use demand-side management in meeting REPS requirements, but electric cooperatives and electricity-supplying municipalities are permitted to use it as part of the REPS mix.

BILL ANALYSIS: SB 567 adds a new definition to G.S. 133.8 as follows:

"Electricity demand reduction" means a measurable reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric power supplier and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of standards.

It adds "electricity demand reduction" as a way that public utilities, electric cooperatives, and electricity-supplying municipalities may meet their REPS requirements.

The pertinent subsections of G.S. 62-133.8, which includes applicable definitions and REPS requirements for public utilities, electric cooperatives, and electricity-supplying municipalities is as attached starting on page 2 of this summary.

EFFECTIVE DATE: Effective when it becomes law.

§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).

(a) Definitions. – As used in this section:

(1) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.

(2) "Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. "Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load.

(3) "Electric power supplier" means a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.

(4) "Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. "Energy efficiency measure" does not include demand-side management.

(5) "New renewable energy facility" means a renewable energy facility that either:

a. Was placed into service on or after January 1, 2007.

b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to January 1, 2007.

c. Is a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.

(6) "Renewable energy certificate" means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission. A "renewable energy certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.

(7) "Renewable energy facility" means a facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:

a. Generates electric power by the use of a renewable energy resource.

b. Generates useful, measurable combined heat and power derived from a renewable energy resource.

c. Is a solar thermal energy facility.

(8) "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent

pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

(1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.

c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures.

d. Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.

e. Purchase renewable energy certificates derived from in-State or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility

with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

(c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Membership Corporations and Municipalities. –

(1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.

c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.

d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.

e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

(d) Compliance With REPS Requirement Through Use of Solar Energy Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent

(0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, "new" means a facility that was first placed into service on or after January 1, 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Solar Energy Resources
2010	0.02%
2012	0.07%
2015	0.14%
2018	0.20%

(e) Compliance With REPS Requirement Through Use of Swine Waste Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Swine Waste Resources
2012	0.07%
2015	0.14%
2018	0.20%

(f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. – For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours of the total electric power sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014	900,000 megawatt hours

(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall

meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement.

(h) Cost Recovery and Customer Charges. –

(1) For the purposes of this subsection, the term "incremental costs" means all reasonable and prudent costs incurred by an electric power supplier to:

a. Comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section that are in excess of the electric power supplier's avoided costs other than those costs recovered pursuant to G.S. 62-133.9.

b. Fund research that encourages the development of renewable energy, energy efficiency, or improved air quality, provided those costs do not exceed one million dollars ($1,000,000) per year.

c. Comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of this section that exceed the costs that the electric power supplier would have incurred under those subsections in the absence of the federal mandate.

(2) All reasonable and prudent costs incurred by an electric power supplier to comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of this section, including, but not limited to, the avoided costs associated with a federal mandate that exceeds the avoided costs that the electric power supplier would have incurred pursuant to subsections (b), (c), (d), (e), and (f) of this section in the absence of the federal mandate, shall be recovered by the electric power supplier in an annual rider charge assessed in accordance with the schedule set out in subdivision (4) of this subsection increased by the Commission on a pro rata basis to allow for full and complete recovery of all reasonable and prudent costs incurred to comply with the federal mandate.

(3) Except as provided in subdivision (2) of this subsection, the total annual incremental cost to be incurred by an electric power supplier and recovered from the electric power supplier's retail customers shall not exceed an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year. An electric power supplier shall be conclusively deemed to be in compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section if the electric power supplier's total annual incremental costs incurred equals an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of

customer accounts determined as of December 31 of the previous calendar year. The total annual incremental cost recoverable by an electric power supplier from an individual customer shall not exceed the per-account charges set out in subdivision (4) of this subsection except as these charges may be adjusted in subdivision (2) of this subsection.

(4) An electric power supplier shall be allowed to recover the incremental costs incurred to comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section and fund research as provided in subdivision (1) of this subsection through an annual rider not to exceed the following per-account annual charges:

Customer Class	2008-2011	2012-2014	2015 and thereafter
Residential per account	$10.00	$12.00	$34.00
Commercial per account	$50.00	$150.00	$150.00
Industrial per account	$500.00	$1,000.00	$1,000.00

(5) The Commission shall adopt rules to establish a procedure for the annual assessment of the per-account charges set out in this subsection to an electric public utility's customers to allow for timely recovery of all reasonable and prudent costs of compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section and to fund research as provided in subdivision (1) of this subsection. The Commission shall ensure that the costs to be recovered from individual customers on a per-account basis pursuant to subdivisions (2) and (3) of this subsection are in the same proportion as the per-account annual charges for each customer class set out in subdivision (4) of this subsection.

...."

S75-SMRC-7(CSRC-8) v2

Steve Rose, Principal Attorney, Research Division, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 91*

Short Title:	Repeal e-NC Sunset.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Commerce.	

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC AUTHORITY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL AND URBAN AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3(a) of S.L. 2006-66, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011.~~"

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

SENATE BILL 91:
Repeal e-NC Sunset

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 15, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 91would repeal the sunset provision pertaining to the e-NC Authority.

[As introduced, this bill was identical to H91, as introduced by Reps. Faison, K. Alexander, Tolson, West, which is currently in House Commerce and Job Development.]

CURRENT LAW: The e-NC Authority is an independent agency within the Department of Commerce. The purpose of the Authority is to manage, oversee, promote, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. The Authority also serves as the central rural and urban distressed areas Internet access policy planning body of the State. The authority is directed by law to communicate and coordinate with State, regional, and local agencies and private entities in order to continue the development and facilitation of a coordinated Internet access policy for the citizens of North Carolina.

BILL ANALYSIS: The e-NC Authority was created by the General Assembly in 2003 and designated as the designated as the successor entity of the Rural Internet Access Authority. E-NC was initially scheduled to be dissolved effective December 31, 2006; but it was extended for an additional five years and is now scheduled to be dissolved effective December 31, 2011. This bill would remove the sunset provision entirely.

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

S91-SMTD-9(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 91*

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

S91-ATD-6 [v.1]

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

Date _____,2011

Senator Rucho

moves to amend the bill on page 1, lines 2 through 4, by rewriting the lines to read:
"AN ACT TO EXTEND THE SUNSET PROVISION PERTAINING TO THE E-NC AUTHORITY.";

and on page 1, lines 11 through 14, by rewriting the lines to read:
"remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective ~~December 31, 2011.~~June 30, 2015. This act is repealed effective ~~December 31, 2011.~~June 30, 2015. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective ~~December 31, 2011.~~June 30, 2015.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED _____ TABLED _____

SENATE BILL 194*

Short Title:	Electric Vehicle Incentives.	(Public)
Sponsors:	Senators Apodaca, Meredith; Blue and Mansfield.	
Referred to:	Commerce.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PLUG-IN ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES AND TO EXEMPT PLUG-IN ELECTRIC VEHICLES FROM THE EMISSIONS INSPECTION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(28a) Plug-in electric vehicle. – A four-wheeled motor vehicle that meets each of the following requirements:

a. Is made by a manufacturer primarily for use on public streets, roads, and highways.

b. Has not been modified from original manufacturer specifications.

c. Is rated at not more than 8,500 pounds unloaded gross vehicle weight.

d. Has a maximum speed capability of at least 65 miles per hour.

e. Draws electricity from a battery that has all of the following characteristics:

1. A capacity of not less than four kilowatt hours.

2. Capable of being recharged from an external source of electricity.

3. Acquired by the taxpayer on or after October 1, 2010.

...."

SECTION 2. G.S. 20-146.2(a) reads as rewritten:

"**§ 20-146.2. Rush hour traffic lanes authorized.**

(a) HOV Lanes. – The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor

vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to any of the following:

(1) ~~motorcycles or~~ Motorcycles.

(2) ~~vehicles~~ Vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants.

(3) ~~HOV lane restrictions shall not apply to emergency~~ Emergency vehicles. As used in this ~~subsection,~~ subdivision, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency.

(4) Plug-in electric vehicles as defined in G.S. 20-4.01(28a), regardless of the number of passengers in the vehicle."

SECTION 3. G.S. 20-183.2(b) reads as rewritten:

"(b) Emissions. – A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

...

(9) It is not a plug-in electric vehicle as defined in G.S. 20-4.01(28a)."

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

SENATE BILL 194:
Electric Vehicle Incentives

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 15, 2011
Introduced by:	Sens. Apodaca, Meredith	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 194 defines 'plug-in electric vehicle', authorizes those vehicles to operate in HOV lanes, and exempts them from the emissions inspection requirement.***

[As introduced, this bill was identical to H222, as introduced by Reps. Lewis, Gibson, Samuelson, which is currently in House Transportation.]

CURRENT LAW AND BILL ANALYSIS:

Plug-in electric vehicles. Senate Bill 194 would define plug-in electric vehicle as a four-wheeled motor vehicle that is manufactured primarily for use on public highways, has not been modified from the original manufacturer specifications, is rated not more than 8,500 pounds unloaded gross vehicle weight, has a maximum speed of at least 65 mph, and draws electricity from a battery.

High occupancy vehicle (HOV) lanes. HOV lanes are travel lanes designated for use by vehicles with a specified number of passengers. HOV lane restrictions do not apply to motorcycles, vehicles designed to transport 15 or more passengers, or emergency vehicles. Senate Bill 194 would authorize plug-in electric vehicles to use HOV lanes, regardless of the number of passengers in the vehicle.

Emissions inspection. Generally, registered motor vehicles are subject to safety inspections and emissions inspections (if registered in an emissions county). Senate Bill 194 would exempt plug-in electric vehicles from the emissions inspection requirement.

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

S194-SMSU-6(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 194 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Davis
Sen.)

1 moves to amend the bill on page 1, line 15
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "specifications." and substituting
4 "specifications ~~in a manner that~~
5 ~~reduces performance~~" with regard to
6 ~~power train~~ or any manner of
7 powering the vehicle."
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 146*

Short Title:	State Shrimp Festival-Sneads Ferry.	(Public)
Sponsors:	Senator Brown.	
Referred to:	Commerce.	

March 1, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE THE SNEADS FERRY SHRIMP FESTIVAL THE OFFICIAL STATE SHRIMP FESTIVAL.

Whereas, since 1970, the Village of Sneads Ferry has held an annual shrimp festival to bring the community and surrounding areas together in celebration of the Village's coastal and aquacultural heritage; and

Whereas, the Sneads Ferry Shrimp Festival has grown into a great marketing and promotional tool for the Sneads Ferry community, Onslow County, and eastern North Carolina; and

Whereas, the Sneads Ferry Shrimp Festival should be adopted as the official shrimp festival of the State of North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"**§ 145-33. State Shrimp Festival.**

The Sneads Ferry Shrimp Festival is adopted as the official shrimp festival of the State of North Carolina."

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

SENATE BILL 146:
State Shrimp Festival-Sneads Ferry

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 15, 2011
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 146 would make the Sneads Ferry Shrimp Festival the official State shrimp festival.***

[As introduced, this bill was identical to H173, as introduced by Rep. Shepard, which is currently in Rules, Calendar, and Operations of the House.]

CURRENT LAW: Chapter 145 of the General Statutes sets out official State symbols and other official adoptions.

BILL ANALYSIS: Senate Bill 146 would add a section to Chapter 145 making the Sneads Ferry Shrimp Festival the official shrimp festival of the State of North Carolina.

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

S146-SMSU-5(e1) v1

PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027

DATE: 3-15 **TIME:** 11 Am

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

Page Name	Hometown	Sponsoring Senator
1 Jessica Lee	Pineville	Robert Rucho
2 John Scott	Holly Springs	Josh Stein
Zachary Thorrington	Elm City	Buck Newton
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 15, 2011
Date

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Deatrice Williams	CUCA
Daniel Baum	Troutman Sanders
Phil Morgan	Piedmont Natural Gas
Steve Brewer	CenturyLink
	Misc
Kathy Hawkins	Duke Energy
Sam Watts	NCUC
Bruce Thompson	Parker Poe
Tom Bean	NC EDF
Jim Kent	NC Beer & Wine Wholesalers

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 15, 2011

Name of Committee — **Date**

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Lucius PULLEN	ATTORNEY
Angie Bailey	The e-NC Authority
Jane Patterson	The e-NC Authority
GEORGE SUDDARTH	NC BEV
Lisa Lucas	Ragsdale Liggett
Sammy Roberson	TWC
Shaheen Syal	
Donna Sullivan	
David W. Mitchell	
John Roberts	NCRMA
Bill McAulay	PSNC Energy

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Senate Commerce Committee
Name of Committee

March 15, 2011
Date

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Rick Zechini	Progress Energy
[illegible]	NCACC
Angie Hauser	WM
JGOODMAN	NC CHAMBER
[illegible]	JP Hassoc
MARTY BOCOCK	ECC TECHNOLOGIES
[illegible]	NCIM
Sara Burrows	Carolina Journal
[illegible]	SA
Michelle Frazier	MF+S
Doug Hearn	WM
ZEB ALLEY	NMRS

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Senate Commerce Committee — March 15, 2011

Name of Committee — **Date**

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MIA BAILEY	ElectriCities
Kay Emanuel	Legislative Reporting Services
John Havelin	Manning Fulton
David Ferrell	Vandeventer Black
Elizabeth Robinson	NCEMA
Andy Ellen	NCEMA
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	M+R
Jay Dirtore	SEA TOA
Daniel [illegible]	NCLM

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 15, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Katie Stanley	Dept of Commerce

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 15, 2011
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Amy McConkey	NC Bev Assn
Gay Robertson	AP
Robert Wilson	SAS
Dave Simpf	CAGC

SENATE COMMERCE COMMITTEE
Tuesday, March 22, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 22, 2011 in room 1027 of the Legislative Building. Henna Patel of Cary served as the page. Twenty-two members of the committee were present. Senator Apodaca presided as chair.

S.J.R. 369 – Confirm Joseph A. Smith Commissioner Banks

Senator Brown was recognized to explain the bill which confirms the appointment of Mr. Joseph A. Smith, Jr. as Commissioner of Banks for a four-year term that expires March 31, 2015 and is effective upon ratification. Don Hobart, the Governor's Senior Advisor for Economic Development, was recognized. He offered a recommendation of Mr. Smith as well as highlighting his career and background. Senator Vaughan moved for a favorable report and the motion carried. Commissioner Smith was recognized. He thanked the committee for its consideration. He then introduced and thanked his staff. A copy of the bill, the summary, the Governor's appointment letter, the State Ethics Commission's statement of economic interest, and Mr. Smith's curriculum vitae is attached.

At this point in the meeting, Senator Gunn assumed the chair's responsibilities.

S.B. 125 – NC School of Biotechnology and Agriscience

Senator Brown was recognized to explain the bill. It would establish the North Carolina School of Agriscience and Biotechnology, a regional high school with a special focus on agriscience and biotechnology, serving the counties of Chowan, Hyde, Tyrell, and Washington. The bill is a recommendation of the Joint Legislative Joining our Businesses and Schools (JOBS) Study Commission. The following speakers were recognized:

- Lieutenant Governor Walton Dalton – Chair of the JOBS Commission. He outlined the need for the school especially in the northeastern part of the State.
- John Farrelly, Washington County Schools Superintendent. He wants the school if funding can be found so that it does not affect his current budget. He provided a financial statement (attached).
- Dr. Allen Smith, Edenton Chowan County Schools. He stated that the school location will provide an economic benefit to the area, but a new funding formula is needed. A copy of his remarks is attached.
- Dr. Michael Dunsmore, Tyrrell County Schools. He thanked Senator Brown for the bill. He thinks it is a great idea, but wants a better funding formula.
- Joe Landino, recently retired Tyrrell County farmer. He informed the committee that today's farmers need to be chemists, ecologists, mathematicians, soil scientists, and more. This school will help.

- Art Keeney, recently retired President/CEO of East Carolina Bank. He urged for the passage of the bill.
- Paul Tine, NE Broadband Middle More Non-profit Board Member. He focused on the creation of diversity in the northeast and the apparent need for the school, especially since there is less farmland and farmers.
- Vann Rogerson, President/CEO of NC Northeast Commission. He appreciates the opportunity to have this school in the area and is looking at the prospect of future jobs.
- David Peoples, Washington County Manager. He recognized various Washington County citizens who were attending the meeting to show support for the school. He reminded the committee that agriculture is 75% of the area's industrial base.
- Mike McLaughlin, Lt. Governor's Director of Policy. He was recognized to answer questions.
- Tony Habit, NC New Schools Project President. He was available to answer questions.
- Kara McGraw, a staff attorney with the Research Division. She was recognized to answer questions and explain how the school was partially modeled after the NC School of Math and Science.

No vote was taken on the bill. A copy of the bill, the summary, and a list of speakers is attached.

The meeting adjourned at 12:10 PM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, March 22, 2011, 11:00 AM
1027 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 125	NC School of Biotechnology and Agriscience.	Sen. Hartsell
SJR 369	Confirm Joseph A. Smith Commissioner of Banks.	Sen. Brown

Adjournment

Apodaca opened the mtg as chair.
Sen. Tillman took over as chair

adjourned 1 10p

(1) page rec'd.

Senate Commerce Agenda
Tuesday, March 22

	Bill #	Short Title	Sponsor	Materials	Staff	Comments
			Local Bills			
			Public Bills			
(2)	SB 125	NC School of Biotechnology and Agriscience	~~Hartsell~~ Brown			Speakers see attached
(1)	SJR 369	Confirm Joseph A Smith Commissioner Banks	Brown		Heather	Don Hobart, Senior Advisor for Econ. Development, Governor's Office gave a recommendation w/highlights of Joe's career and ~~be~~ career background Sen. Vaughan moved. * rec'd Comm. Smith for comments. • working for the people • rec'd ~~thanked~~ his staff

Roster of potential speakers and miscellaneous attendees, Senate Commerce Committee Meeting on 3-22.

(1) **JOBS Commission**
Lieutenant Governor Walter Dalton
As Chair of the Legislature's Joining Our Businesses and Schools Study Commission and sponsor of the Cooperative Innovative Education Initiatives Act while a member of the Senate, the Lieutenant Governor will share the vision for the regional agriscience/biotechnology regional early college high school.

School Superintendents
(2) **John Farrelly**
(Superintendent, Washington County Schools) Washington would be the host LEA for the school. Farrelly will discuss the potential of the school as well as the funding challenges the school would present. wrote the proposal & wants the school if it can be. + has financing document

Four LEAs, including Washington, are named in legislation to create the regional early college high school, with other surrounding LEAs expressing varying levels of interest and support. Superintendents from two of the remaining three LEAs also wish to speak. They are:

(3) **Dr. Allen Smith**, Edenton Chowan County Schools; school location is economic benefit for area needs financial language change in bill — new funding formula needed.
(4) **Dr. Michael Dunsmore**, Tyrrell County Schools.
thanked Sen. Brown for the bill - great idea, wants to support opportunity w/ better funding formula.

Economic Interests and Potential Partners

(5) **Joe Landino**
(recently retired Tyrrell County Farmer) – he will represent the Ag Community (Joe started the Blackland Farm Managers Association and lobbied for the Vernon James Research Station to be built in Roper). today's farmers need to be chemists, ecologists, mathmeticians, soil scientists and this school will help

(6) **Art Keeney**
(recently retired President/CEO of East Carolina Bank) – he will represent the business community from the banking perspective (Art will serve as the next Chairman of the NC NE Commission). He lives in Hyde County. urges passage

(7) **Paul Tine**
(NE Broadband Middle Mile Non-Profit Board Member) – Paul will discuss how the new broadband middle mile (currently being installed) will enhance the region's ability to have a globally significant school, as well as how the middle mile will enable more rural students to be "connected" at their homes. Paul is a business owner from Dare County. Focused on creation of diversity in the NE. Very apparent of the need of this school - more people, less farmland & farmers.

(8) **Vann Rogerson**
(President/CEO of NC Northeast Commission) - will give the regional economic development perspective (NC Northeast Commission serves the 16 counties of the NE). I live in Martin County. Appreciates the opportunity to have this school in NE - looking at capacity of future jobs.

County Government in the Region

(9) **David Peoples**
(County Manager for Washington County) – David will share county and local business support for the school (Vernon James is located in Washington County).
rec'd various Washington Cty citizens attending to show support for the school. Ag is 75% of industrial base

Others who will be possibly attending
, but not speaking are:

Jean Woolard (First District Representative, State Board of Education),

Tracey Johnson (Chair of the Washington Co Commissioners),

& Sam Styons (Washington County Businessman who now lives in Greenville).

Mike McLaughlin- Lt. Gov.'s office was rec'd to answer questions

Tony Habit - President NC New Schools Project rec'd to answer ?s

Kara McGraw- rec'd to answer ?'s modeled after school of science & math

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, March 22, 2011

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

FAVORABLE

S.JR. **369** Confirm Joseph A. Smith Commissioner of Banks.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

S369 – Sen. Brown

S 1

SENATE JOINT RESOLUTION 369*

Sponsors:	Senator Brown.
Referred to:	Commerce.

March 21, 2011

A JOINT RESOLUTION TO CONFIRM THE GOVERNOR'S REAPPOINTMENT OF JOSEPH A. SMITH TO THE OFFICE OF COMMISSIONER OF BANKS.

Whereas, G.S. 53-92(a) directs the Governor to quadrennially appoint a Commissioner of Banks, subject to confirmation by the General Assembly by joint resolution; and

Whereas, the term of the current Commissioner of Banks, Joseph A. Smith, shall expire on March 31, 2011; and

Whereas, the Governor wishes to reappoint Joseph A. Smith to the office of Commissioner of Banks to serve until March 31, 2015; and

Whereas, the Governor has submitted the name of Joseph A. Smith by February 1, 2011, as required by G.S. 53-92(a); Now, therefore,

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

SECTION 1. The Governor's reappointment of Joseph A. Smith of Wake County to the office of Commissioner of Banks is hereby confirmed for a term expiring on March 31, 2015.

SECTION 2. This resolution is effective upon ratification.

SENATE JOINT RESOLUTION 369: Reappoint Jos. A. Smith Commissioner of Banks

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 22, 2011
Introduced by:	Sen. Brown	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Joint Resolution 121 confirms the appointment of Mr. Joseph A. Smith, Jr. as Commissioner of Banks for a four-year term that expires March 31, 2015. The resolution is effective upon ratification.***

[As introduced, this bill was identical to H121, as introduced by Reps. Brubaker, Dockham, Carney, Glazier, which is currently in House Banking.]

CURRENT LAW: Mr. Smith was appointed by the Governor to serve as Commissioner of Banks for the term that expires on March 31, 2011. This appointment for a four-year term is subject to confirmation by the General Assembly. The Commissioner of Banks is paid $123,198 per year.

The Commissioner of Banks regulates and supervises banking activities under Chapter 53 and savings institutions activities under Chapter 54B of the North Carolina General Statutes. The primary responsibilities of this office are to insure safe and conservative management of the banks, savings and loan associations, and savings banks under its supervision taking into consideration the interest of the financial institutions' depositors, creditors, shareholders, and the public in their relations with such financial institutions. The North Carolina Banking Commission adopts rules to provide direction and supervision of the Commissioner of Banks as the Commissioner enforces the rules of the Commission and the financial institution laws of North Carolina. The Banking Commission may review the actions of the Commissioner of Banks.

The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the regulation of every state chartered bank, savings and loan association, savings bank or corporation transacting the business of banking in North Carolina, as well as registration/licensing of various financial institutions operating in North Carolina. These financial institutions include:

1. Check-cashers,
2. Consumer finance companies,
3. Mortgage bankers and mortgage brokers,
4. Money transmitters,
5. Refund anticipation lenders,
6. Bank holding companies, and
7. Reverse mortgage lenders.

Attached to this summary is a copy of the Governor's appointment letter, Mr. Smith's resume, and a letter from the State Ethics Board concerning Mr. Smith's Statement of Economic Interest.

S369-SMTD-15(e1) v1

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

BEVERLY EAVES PERDUE
GOVERNOR

January 31, 2010

The Honorable Phil Berger
The Honorable Thom Tillis
NC General Assembly
Raleigh, NC 27601

Dear President Pro-Tem Berger and Speaker Tillis:

Pursuant to G.S. § 53-92, I write to submit to you the name of Mr. Joseph A. Smith, Jr. for reappointment and reconfirmation as Commissioner of the North Carolina Banking Commission effective April 1, 2011. Mr. Smith has served as Commissioner of Banks since June 1, 2002.

Sincerely,

Bev Perdue

cc: Ms. Janet Pruitt
Ms. Denise Weeks
Mr. Joe Smith

STATE ETHICS COMMISSION

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

February 23, 2011

Via email

The Honorable Beverly Perdue
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Re: Evaluation of Statement of Economic Interest for Mr. Joseph A. Smith, Jr.
Commissioner of Banks

Dear Governor Perdue:

I am in receipt of Mr. Joseph A. Smith, Jr.'s, February 18, 2011, Statement of Economic Interest ("SEI") as the Commissioner of Banks. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find an actual conflict of interest or the potential for a conflict of interest.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions from which the public servant, his or her client, a member of the public servant's extended family, or a business or non-profit with which the public servant is associated would receive a reasonably foreseeable financial benefit.

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

Finally, the State Government Ethics Act mandates that all public servants attend an ethics and lobbying education presentation. Please review the attached document for additional information concerning this requirement.

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

Sincerely,

Teresa H. Pell

Teresa H. Pell
SEI Attorney

cc: Mr. Joseph A. Smith, Jr.

NORTH CAROLINA STATE ETHICS COMMISSION
2011 STATEMENT OF ECONOMIC INTEREST

919-715-2071 www.ethicscommission.nc.gov

FOR OFFICE USE ONLY
RECEIVED ON:
FEB 10 2011
STATE ETHICS COMMISSION

COMPLETE THIS FORM AND MAIL SIGNED, ORIGINAL TO
STATE ETHICS COMMISSION, 1324 MAIL SERVICE CENTER, RALEIGH, NC 27699-1324

1. STATEMENT TYPE (SELECT ONE)

☑ NEW ☐ AMENDED

Deadline for filing Statement of Economic Interest
Newly Appointed/Employed: Generally prior to your appointment/employment
All Others: Generally April 15 of current year

2. FILER'S NAME (FIRST, MIDDLE, LAST)

First Name	Middle Name	Last Name	Suffix
Joseph	A.	Smith	Jr.

3. MAILING ADDRESS, CITY, STATE, ZIP+4[1]

Address 1	Address 2	City	State	ZIP
2210 Coley Forest Place		Raleigh	NC	27607

4. EMPLOYER	5. TITLE OR POSITION SOUGHT
NC Office of the Commissioner of Banks	NC Commissioner of Banks
6. DAYTIME PHONE NUMBER (10-digit number no spaces, no characters.)	7. ALTERNATE PHONE NUMBER (10-digit number no spaces, no characters.)
(919) 733-3016	(919) 715-1854
8. E-MAIL ADDRESS	9. REASON FOR FILING (SELECT ALL THAT APPLY)
jsmith@nccob.gov	☑ STATE GOVERNMENT JOB ☐ BOARD/COMMISSION APPOINTMENT

10. EMPLOYED BY (IF FILING BASED ON EMPLOYMENT)

Commerce, Department of

11. BOARD(S) SERVED - Select up to 11 Boards

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

☐ No other household members.

Full Name[3]	Relationship	Occupation/Employer	Nature of Business
Elizabeth Smith	Spouse	Cary Academy	School

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

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

[3]Filers may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a (n) public) supplement form available from the Commission upon request.

The entire document and any attachments are public record.

I. $10,000 PLUS DISCLOSURES

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

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

1. NORTH CAROLINA REAL ESTATE OWNED: Do you, your spouse, or members of your immediate family have an ownership interest in North Carolina real estate with a market value of $10,000 or more?

☑ Yes ☐ No If "Yes", please list below.

Owner of Real Estate	% Ownership Interest	Location by County and City
Joseph & Elizabeth Smith (joint tenants)	100%	Wake County, Raleigh

2. NORTH CAROLINA REAL ESTATE RENTED: Do you, your spouse, or members of your immediate family rent North Carolina real estate with a market value of $10,000 or more to or from the State?

☐ Yes ☑ No If "Yes", please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City

3. PERSONAL PROPERTY OWNED: Within the preceding two years, have you, your spouse, or members of your immediate family sold or bought personal property with a market value of $10,000 or more to or from the State?

☐ Yes ☑ No If "Yes", please list below and identify the State agency involved in the purchase or sale.

Identity of Purchaser	Identity of Seller	Nature and Location of Property

4. PERSONAL PROPERTY RENTED: Do you, your spouse, or members of your immediate family rent personal property with a market value of $10,000 or more to or from the State?

☐ Yes ☑ No If "Yes", please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property

5(a). PUBLIC COMPANIES: Do you, your spouse, or members of your immediate family own interests (generally stock) in a publicly owned company valued at $10,000 or more?

☑ Yes ☐ No If "Yes", please list below.

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

Owner of Interest	Name of Company
Joseph A. Smith, Jr. & Elizabeth Smith	BP PLC

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

5(b). **OPTIONS:** Do you, your spouse, or members of your immediate family hold stock options in a publicly owned company valued at $10,000 or more?

☐ Yes ☑ No If "Yes", please list below.

Owner of Stock Option	Name of Company

6(a). **NON-PUBLIC COMPANIES:** Do you, your spouse, or members of your immediate family have financial interests valued at $10,000 or more in a non-publicly owned company or business entity (including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations)?

☐ Yes ☑ No If "Yes", please list below and complete 6(b) and 6(c).

Owner of Interest	Name of Business Entity

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

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Security or Equity Interests
☑ None or Not Known	

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

Identify Company or Business Entity	Nature of Business Relationship with the State
☑ None or Not Known	

7. **TRUSTS:** Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*?

☐ Yes ☑ No If "Yes", please list below.

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

Name and Address of Trustee	Description of the Trust	Your Relationship to the Trust

8. **LIABILITIES:** Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness (mortgage) on your primary personal residence?

☐ Yes ☑ No If "Yes", please list below. Examples include credit card debts, auto loans, and student loans.

Name of Debtor (You, Spouse, Immediate Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)

II. OTHER DISCLOSURES

9. NONPROFIT INTERESTS: At any time during 2010, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes?

[ ] Yes [✓] No If "Yes", provide the following information.

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

Identify Person and His/Her Position	Name of Nonprofit Corporation or Organization	Nature of Business or Purpose of Organization	Describe State Business or State Funding

10. INCOME: List all sources of income (not amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2010. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, and business income. Do *not* include income received from the following sources:

- ► Capital Gains
- ► Federal government retirement
- ► Military retirement
- ► Social security income/SSDI

Recipient of Income	Name of Source	Business or Industry	Type of Income
[ ] I had no reportable income over $5,000 in 2010.			
Joseph A. Smith, Jr.	State of North Carolina	State Government	salary
Elizabeth Smith	Cary Academy	School	salary

11. PRACTICING ATTORNEY: If you are a practicing attorney check each category of legal representation in which you or the law firm with which you are associated has earned legal fess of $10,000 or more during 2010:

[ ] I am not a practicing attorney.

[ ] Administrative	[ ] Admiralty	[ ] Corporate	[ ] Criminal
[ ] Decedent's Estates	[ ] Environmental	[ ] Insurance	[ ] Labor
[ ] Local Government	[ ] Real Property	[ ] Securities	[ ] Tax
[ ] Tort litigation (including negligence)		[ ] Utilities Regulation	

12. LICENSED PROFESSIONAL: Are you (1) a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association and (2) did you charge or were you paid over $10,000 for those services during 2010?

[ ] Yes [✓] No If yes, please provide the following information.

Type of Business	Nature of Services Rendered

13. BUSINESS RELATIONSHIPS: As of December 31, 2010, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with, your State board or employing entity?

[ ] Yes [✓] No [ ] Legislator / Judicial Officer. If "Yes", provide the following information.

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

Identify Person	Identify Employer (if applicable)	Licensing, Business or Regulatory Relationship

14. **INTEREST IN AGENCY OR BOARD ISSUES:** As of December 31, 2010, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction?

☑ Yes ☐ No ☐ Legislator / Judicial Officer. If "Yes", provide the following information.

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

► Do not list organizations of which you are only a member (not in a leadership role).

Identify Person	Identify Name of Society, Organization or Advocacy Group	Leadership Position (Director, Officer, Board Member)
Joseph A. Smith, Jr.	Conference of State Bank Supervisors Board of Directors	Immediate Past Chairman

15. **FELONY CONVICTION:** Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction?

☐ Yes ☑ No If "Yes", please provide the following information.

Offense	Date of Conviction	County and State of Conviction

16. **RECEIPT OF GIFTS OUTSIDE OF NORTH CAROLINA:** During any calendar quarter in the preceding year (but only the time period after you were appointed, employed or filed or were nominated as a candidate), did you (1) receive any gift(s) exceeding $200 per quarter from a person or group of persons acting together, and (2) when both you and those person(s) were outside North Carolina at the time you accepted the gift(s), and (3) the gift(s) were given under circumstances that would lead a reasonable person to conclude that they were given for lobbying?

☐ Yes ☑ No If yes, please provide the following information.

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

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

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value

17. **ACCEPTANCE OF SCHOLARSHIP:** During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate) have you (1) accepted a "scholarship" exceeding $200 from a person or group of persons acting together and (2) those person(s) were outside North Carolina and (3) the scholarship was related to your public position? **A "scholarship" is a grant-in-aid to attend a conference, meeting, or similar event.**

☐ Yes ☑ No ☐ I am a Legislator / Judicial officer. If yes, please provide the following information.

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

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

► Legislators are not required to report scholarships paid by a nonpartisan legislative organization of which the legislator or the General Assembly is a member or participant or an affiliate of that organization.

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

18. **LOBBYIST:** Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or were you registered as such during 2010?

☐ Yes ☑ No If "Yes", please provide the following information.

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

19(a). **BUSINESS ASSOCIATIONS:** List the name of each business with which you are associated (sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations, publicly-held or privately-held) where you or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager.

☐ No Business Associations

Identify Person	Relationship to Filer	Company	Role of Person

19(b). **COMPANY OR BUSINESS DEALINGS WITH STATE:** If you know that any company or business entity listed in 19(a) above has any material business dealings or business contracts with the State, or is regulated by the State, provide a brief description of that business activity or relationship.

Identify Company or Business Entity	Nature of Business Relationship with the State
☑ Not applicable (No entities listed on #19a) ☐ No relationship / Not known	

20(a). **APPOINTMENT TO BOARDS COVERED BY STATE GOVERNMENT ETHICS ACT, CHAPTER 138A OF THE GENERAL STATUTES:** Did a Council of State member appoint you to or recommend you for appointment to a board covered by the Ethics Act? The Council of State members are: Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance.

☐ Yes ☑ No If "Yes", proceed to question **20(b)**. If "No", proceed to question **21**.

20(b). **CAMPAIGN CONTRIBUTIONS:** In the preceding calendar year did you (not immediate family members) make contributions with a cumulative total of more than $1,000 to the Council of State member (see list above) who appointed you? Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."

☐ Yes ☑ No If "Yes", list all such contributions. If "No", proceed to question **21**.

Date	Amount	Contributed to

21. **CAMPAIGN ACTIVITIES:** Are you now, or are you a prospect to be:	
a. the head of a principal state department (e.g. cabinet secretary) appointed by the Governor; or b. a North Carolina Supreme Court Justice; Court of Appeals, Superior or District Court Judge; or c. a member of any of the following boards: • ABC Commission • Coastal Resources Commission • State Board of Education • State Board of Elections • Employment Security Commission • Environmental Management Commission • Industrial Commission • State Personnel Commission • Rules Review Commission • Board of Transportation • UNC Board of Governors • Utilities Commission • Wildlife Resources Commission	☑ Yes ☐ No **If "No", proceed to question 22.**
d. If so, were you appointed to, or are you being considered for, appointment to your public position by a Council of State Member (Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance)?	☑ Yes ☐ No **If "No", proceed to question 22.**
e. If so, you must indicate whether during the preceding calendar year you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position: i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."	☐ Yes ☑ No
ii. Hosted a fundraiser at your residence or place of business?	☐ Yes ☑ No
iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?	☐ Yes ☑ No

22. **OTHER INFORMATION:** Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? ☐ Yes ☑ No If "Yes", please provide that information.

Please ensure that you have responded to all questions and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, you will be provided with a supplement to complete, sign and return. Your SEI is not deemed "filed" until complete answers are submitted for every question.

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

AFFIRMATION

I swear or affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto are public record.

I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

☐ **I Agree**

Joseph A Smith, Jr.
PRINTED NAME

SIGNATURE

** Notarization is no longer required. **

February 18, 2011
DATE

Submit SIGNED, ORIGINAL documents.

JOSEPH A. SMITH, JR.

EMPLOYMENT HISTORY

June 1, 2002 – Present **North Carolina Commissioner of Banks**

Leader of the agency of North Carolina state government that supervises or regulates state chartered banks, savings banks and savings and loan associations; mortgage bankers, mortgage brokers and mortgage loan originators; consumer finance companies, check cashers, money transmitters, reverse mortgage lenders and refund anticipation lenders.

Accomplishments during term of office include the following:

Banking

- Assets under supervision increased from $106.4 billion at June 1, 2002 to $245 billion at December 31, 2009.
- Banks under supervision included BB&T ($140 billion total assets), RBC Bank ($30 billion total assets) and First Citizens Bank ($18 billion total assets).

Mortgage and Consumer Lending Regulation

- Led implementation of the mortgage banker, broker and loan officer licensing provisions of the North Carolina Mortgage Lending Act ("MLA").
- Hearing officer in over 150 appeals from denials of licenses to companies and individuals not meeting the MLA's standards for character, fitness or financial responsibility and over 100 disciplinary cases to suspend or revoke MLA licenses.
- A leader in the formation of State Regulatory Registry, LLC.
- In accordance with state enabling legislation, sponsored a foreclosure prevention project that has kept over 4,000 North Carolina families in their homes.
- Hearing officer in the matter of *Advance America, Cash Advance Centers of North Carolina, Inc.*, an administrative proceeding that determined that companies conducting payday advance lending transactions in North Carolina as the purported agents of out of state banks are subject to the North Carolina Consumer Finance Act. This matter ended payday lending in North Carolina and is on appeal.

Other Initiatives / Achievements

- Led the institution of a banded pay and performance management program for OCOB employees that brought compensation to market levels and included incentive pay.
- Led the agency during the incorporation of the State Savings Institution Division into the Office of Commissioner of Banks.
- Authorized "scholarships" to the North Carolina Bank Directors College for minority and female professionals who wish to join bank boards of directors.
- Currently a member of Governor's task force to increase small business lending by North Carolina banks.

May 2000 - May 2002	**Counsel, Thacher Proffitt & Wood, Washington, DC**
September 1991 - April 2000	**General Counsel and Secretary, Centura Banks, Inc. and Centura Bank (now RBC Bank (US))**
September 1988 - April 1991	**Counsel, Partner, Poyner & Spruill, Raleigh, NC**
September 1984 - September 1988	**Assistant General Counsel, Emery Air Freight Corporation, Wilton, Connecticut**
February 1979 - September 1984	**Staff Attorney, Corporate Counsel, PepsiCo, Inc., Purchase, New York**
September 1975 - February 1979	**Associate, Brown, Wood, Ivey, Mitchell & Petty (now Sidley Austin LLP), New York, New York**

EDUCATION AND PROFESSIONAL LICENSES

A.B. (History) Davidson College, Davidson, North Carolina, 1971

J.D. University of Virginia Law School, Charlottesville, Virginia, 1974

Admitted to the practice of law in New York (1975) and North Carolina (1989)

AFFILIATIONS

Conference of State Bank Supervisors

- **Immediate Past Chairman, one year term ending May 2011**
- **Chairman, one-year term ending May 2010**
- **Chairman-Elect, one-year term ending May 2009**
- **Vice Chairman, one-year term ending May 2008**
- **Chairman, Legislative and Regulatory Committees**

Founding Member, Board of Managers, State Regulatory Registry, LLC (owner and operator of nationwide licensing system for mortgage originators under the SAFE Act)

Chairman , Administrative Law Section, North Carolina Bar Association, one-year term ending July, 2009

PROFESSIONAL PUBLICATIONS

"*Savings for the Poor: The Hidden Benefits of Electronic Banking:* A Review and Response," 5 NC Banking Inst. 1 (2001)

"The Federal Banking Agencies' Guidance on Subprime Lending: Regulation with a Divided Mind," 6 N.C. Banking Inst. 75 (2002)

"Federal and State Regulation of Financial Services: Competition and the Search for Comity," Consumer Finance Law Quarterly Report, Vol. 57, Nos. 2-4 (Spring – Fall 2003)

"Financial Literacy, Regulation and Consumer Welfare," 8 N.C. Banking Inst. 77 (2004).

Speeches and testimony available at <http://www.nccob.org/NCCOB/Researchers/CommissionersPage> .

ADDITIONAL PERSONAL INFORMATION

Born November 9, 1949, in Charleston, West Virginia.

Resides in Raleigh, North Carolina with Elizabeth Marion Smith, his wife of 31 years. Father of two grown sons, Joseph III of Minneapolis, Minnesota, and Matthew, of Wrightsville Beach, North Carolina. Grandfather of Rowan Joseph Smith of Minneapolis.

SENATE BILL 125*
Corrected Copy 3/1/11

Short Title:	NC School of Biotechnology and Agriscience.	(Public)
Sponsors:	Senators Hartsell, Brown; Brunstetter and Atwater.	
Referred to:	Commerce.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA SCHOOL OF AGRISCIENCE AND BIOTECHNOLOGY, AS RECOMMENDED BY THE JOINT LEGISLATIVE JOINING OUR BUSINESSES AND SCHOOLS (JOBS) STUDY COMMISSION UPON THE RECOMMENDATIONS OF THE AGRISCIENCE AND BIOTECHNOLOGY REGIONAL SCHOOL PLANNING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 15A.

"North Carolina School of Agriscience and Biotechnology.

"**§ 115C-229A. Establishment of the North Carolina School of Agriscience and Biotechnology.**

(a) In order to foster, encourage, and promote the development of knowledge and skills in biotechnology and agricultural sciences, the North Carolina School of Agriscience and Biotechnology is established to offer a course of study for a high school diploma emphasizing the disciplines of science, technology, engineering, and mathematics, with a special focus on biotechnology and agriscience.

(b) The School shall be located at the Vernon G. James Research and Extension Center.

(c) The School shall be a public school.

(d) Except as otherwise provided in this Article, the School is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

"**§ 115C-229B. Definitions.**

The following definitions apply in this Article:

(1) Board. – The Board of Directors of the North Carolina School of Agriscience and Biotechnology.

(2) First generation student. – A student who has no parent who has completed a two- or four-year degree.

(3) Participating units. – The local school administrative units of Chowan, Hyde, Tyrrell, and Washington Counties.

(4) Principal. – The principal of the North Carolina School of Agriscience and Biotechnology.

(5) School. – The North Carolina School of Agriscience and Biotechnology.

"**§ 115C-229C. Boards of Directors; appointment; terms of office.**

(a) Appointment. – There shall be a Board of Directors of the School which shall consist of the following members. Appointed members of the Board shall be selected for their interest in and commitment to the importance of public education to regional economic development and to the purposes of the School.

(1) Local boards of education. – The local board of education for the participating units each shall appoint one member to the Board from among the membership of the local board of education. Members appointed by local boards of education shall serve terms of four years.

(2) Local superintendents. – The local superintendent of Washington County Schools shall serve as an ex officio member of the Board. One additional superintendent shall be selected from among the superintendents of the participating units by those superintendents. The additional superintendent shall serve an initial term of two years. Subsequent appointments shall serve a term of four years.

(3) Economic development region. – The North Carolina's Northeast Commission shall appoint three members as representatives of the business community. At least one of the appointees shall be a resident of Washington County. The appointees shall serve an initial term of two years. Subsequent appointees shall serve a term of four years.

(4) Parent Advisory Council. – The Parent Advisory Council established by G.S. 115C-229I shall appoint a member to the Board from among the Council membership. The member appointed by the Council shall serve a term of four years, or until the child of the parent no longer attends the School.

(5) Higher education partners. – The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee shall serve as an ex officio member of the Board. The Presidents of Beaufort Community College and the College of the Albemarle shall jointly select a president or president's designee to serve as an ex officio member of the Board.

(b) Vacancies. – Whenever an appointed member of the Board shall fail for any reason other than ill health or service in the interest of the State or nation to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. Any member of the Board may be removed from office by the appointing authority for misfeasance, malfeasance, or nonfeasance in office. All vacancies shall be filled by the appointing authority for the remainder of the term of office.

"**§ 115C-229D. Board of Directors; meetings; rules of procedure; officers.**

(a) The Board shall meet at least four times a year and may hold special meetings at any time, at the call of the chair or upon petition addressed to the chair by a majority of the members of the Board. All meetings of the Board shall be subject to the requirements of Article 33C of Chapter 143 of the General Statutes.

(b) The Board shall elect a chair and a vice-chair from among its members, who shall serve a two-year term.

(c) All members of the Board shall be voting members except for the chair, who may vote only on matters to break a tie.

(d) The Board shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(e) Members of the Board shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions.

"**§ 115C-229E. Board of Directors; corporate powers.**

(a) The Board shall be known and distinguished by the name of 'North Carolina School of Biotechnology and Agriscience' and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for

the use of the School, and to apply to same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the School, and shall have power to receive donations from any source whatsoever, to be devoted exclusively to the purposes of the maintenance of the School, or according to the terms of the donation.

(b) The Board shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions; and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

"**§ 115C-229F. Board of Directors; powers and duties.**

The Board shall have the following powers and duties:

(1) Academic program. –

a. The Board shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade. The Board shall design its programs to meet at least the student performance standards adopted by the State Board of Education and the student performance standards contained in this Chapter.

b. The Board shall conduct student assessments required by the State Board of Education.

c. The Board shall provide the opportunity to earn or obtain credit toward degrees from a community college subject to Chapter 115D of the General Statutes or a constituent institution of The University of North Carolina.

d. The Board shall adopt a school calendar consisting of a minimum of 180 days of instruction covering at least nine calendar months. In establishing the school calendar, the Board shall consider the norms, expectations, and practices of the biotechnology and agriscience industries.

(2) Standards of performance and conduct. – The Board shall establish policies and standards for academic performance, attendance, and conduct for students of the School. The policies of the Board shall comply with Article 27 of this Chapter.

(3) School attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The principal shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(4) Reporting. – The Board shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(5) Assessment results. – The Board shall provide data to the participating unit in which a student is domiciled on the performance of that student on any testing required by the State Board of Education.

(6) Education of children with disabilities. – The Board shall require compliance with laws and policies relating to the education of children with disabilities.

(7) Health and safety. – The Board shall require that the School meet the same health and safety standards required of a local school administrative unit.

(8) Driving eligibility certificates. – The Board shall apply the rules and policies established by the State Board of Education for issuance of driving eligibility certificates.

(9) Purchasing and contracts. – The Board shall comply with the purchasing and contract statutes and regulations applicable to local school administrative units.

(10) Exemption from the Administrative Procedures Act. – The Board shall be exempt from Chapter 150B of the General Statutes, except final decisions of the Board in a contested case shall be subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

"**§ 115C-229G. Student admissions and assignment.**

(a) School Enrollment. – The total enrollment of the School shall not exceed 100 students in each grade level.

(b) Residency Requirement. – A student must be domiciled in a participating unit to be eligible to attend the School. A student's eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student ceases to satisfy the residency requirements.

(c) Participating Unit Allotments. – The number of student seats in the freshman class of the School shall be assigned proportionate to the total student population of the participating units, as determined by the participating unit's final average daily membership in the preceding school year. If fewer students residing in a participating unit elect to attend the School than available allotted seats, the remaining seats shall be divided proportionally among the other participating units.

(d) Admissions Criteria. – The Board shall establish criteria, standards, and procedures for admission of students. The admission criteria shall give priority to first generation students, and shall include the following:

(1) Demonstrated academic achievement, particularly in science, technology, engineering, and mathematics.

(2) Demonstrated student interest in attendance.

(3) Documented parental support for student attendance.

(e) Lottery. – If the number of eligible students meeting the Board's admission criteria exceeds the seats available through the participating unit allotment, students shall be accepted by lot.

"**§ 115C-229H. Employees.**

The Board shall appoint all certified and noncertified staff.

(1) Principal. – The Board shall employ and contract with a principal for a term not to exceed three years. The principal shall meet the requirements for certification set out in G.S. 115C-284, unless waived by the State Board of Education upon submission of a request by the Board. The principal shall be responsible for school operations and shall exercise those duties and powers delegated by the Board.

(2) Teachers. – The Board shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school. At least fifty percent (50%) of teachers employed by the Board shall hold teacher certificates, unless waived by the State Board of Education upon submission of a request by the Board.

(3) Career status. – Employees of the Board shall not be eligible for career status. If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the School, the local school administrative unit shall grant the leave for one year. For the initial year of the School's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the School's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of absence to teach at the School may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the School if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers, and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) Noncertified staff. – The Board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services.

(5) Employment dismissal. – An employee of the Board is not an employee of the local school administrative unit in which the School is located. The Board may discharge certified and noncertified employees according to the terms of the employment contract.

(6) Employee benefits. – Employees of the Board shall participate in the Teachers' and State Employees' Retirement System and the State Health Plan on the same terms as employees employed by local boards of education.

(7) Exemptions. – Employees of the Board shall be exempt from Chapter 126 of the General Statutes, except Articles 6 and 7.

"**§ 115C-229I. Parent Advisory Council, purpose, appointments.**

(a) Purpose. – There shall be a Parent Advisory Council to serve as a resource and provide input to the Board as to the operation of the School. The Board shall consult the Parent Advisory Council when considering changes to the School's operations that may significantly impact students attending the School.

(b) Appointment. – Each local board of education of the participating units shall appoint two members to the Parent Advisory Council for a term of four years or until the member's child no longer attends the School. Appointees shall be parents or guardians of students attending the School and shall, to the extent possible, reflect the demographic composition of the participating units.

"**§ 115C-229J. State and local funds.**

(a) The State Board of Education shall allocate to the School:

(1) An amount equal to the average per pupil allocation for average daily membership from the participating unit allotments for each child attending the School, except for the allocation for children with disabilities and for the allocation for children with limited English proficiency.

(2) An additional amount for each child attending the School who is a child with disabilities. In the event a child with disabilities leaves the School and enrolls in a public school during the first 60 school days in the school year, the School shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in the School during the first 60 school days in the school year, the State Board shall allocate to the School the pro rata amount of additional funds for children with disabilities.

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

(b) The State Board shall allow for annual adjustments to the amount allocated to the School based on its enrollment growth in school years subsequent to the initial year of operation.

(c) For each child who enrolls in the School, the participating unit in which the child resides shall transfer to the School an amount equal to the per pupil amount of all money appropriated to the local current expense fund for the participating unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only if the child enrolled in the School resides in that tax district.

"**§ 115C-229K. Finance and budget.**

(a) The Washington County Board of Education shall be the finance agent for the Board and shall have all the rights, duties, and obligations for receipt, accounting, and dispersing funds for the Board, including all the rights, duties, and obligations specified in Article 31 of this Chapter, which powers shall be exercised by the Washington County Board of Education for and on behalf of the Board. The Board shall provide reasonable compensation to the Washington County Board of Education for this service.

(b) No later than 10 days after the money is appropriated to the local current expense fund, each local board of education of a participating unit shall transfer to the Board the amount required under G.S. 115C-229J(c) for each child enrolled in the School who resides in that participating unit. Once it has received funds from the local board of education, the Board shall be under no obligation to return the funds.

"**§ 115C-229L. Participating units.**

(a) Transportation. – A participating unit which otherwise provides transportation to students enrolled in that unit shall provide transportation to students domiciled within the participating unit to the School.

(b) Food Service. – Washington County Schools shall provide, to the extent practicable, school food services to the School. For purposes of federal funding through the National School Lunch Program or other federally supported food service programs, Washington County Schools shall be permitted to include eligible students enrolled in the School. Participating units other than Washington County Schools may not include students enrolled in the School for purposes of federally supported food service programs.

"**§ 115C-229M. Criminal history record checks.**

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to

fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'School personnel' means any of the following:

a. Member of the Board

b. Employee of the School.

c. Independent contractor or employee of an independent contractor of the School if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of the School.

(b) The Board shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The Board shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The Board may grant conditional approval of an application while the Board is checking a person's criminal history and making a decision based on the results of the check.

The Board shall not require school personnel to pay for the criminal history record check authorized under this section.

(c) The Board shall require the person to be checked by the Department of Justice (i) to be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the Board or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) to sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The Board shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the Board the criminal history from the State and

National Repositories of Criminal Histories of any school personnel for which the Board requires a criminal history record check.

The Board shall not require school personnel to pay for the fingerprints authorized under this section.

(d) The Board shall review the criminal history it receives on an individual. The Board shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The Board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The Board may delegate any of the duties in this subsection to the principal.

(e) The Board, or the principal if designated by the Board, shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

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

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

(h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

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

"**§ 115B-2. Tuition waiver authorized.**

(a) The constituent institutions of The University of North Carolina and the community colleges as defined in G.S. 115D-2(2) shall permit the following persons to attend classes for credit or noncredit purposes without the required payment of tuition:

(1) Repealed by Session Laws 2009-451, s. 8.11(a), effective July 1, 2009.

(2) Any person who is the survivor of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker killed as a direct result of a traumatic injury sustained in the line of duty.

(3) The spouse of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty.

(4) Any child, if the child is at least 17 years old but not yet 24 years old, whose parent is a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty. However, a child's eligibility for a waiver of tuition under this Chapter shall not exceed: (i) 54

months, if the child is seeking a baccalaureate degree, or (ii) if the child is not seeking a baccalaureate degree, the number of months required to complete the educational program to which the child is applying.

(5) Any child, if the child (i) is at least 17 years old but not yet 24 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, (iii) is a resident of the State; and (iv) is eligible for services under the Chaffee Education and Training Vouchers Program; but the waiver shall only be to the extent that there is any tuition still payable after receipt of other financial aid received by the student.

(6) Any child enrolled in the North Carolina School of Biotechnology and Agriscience as established by Article 15A of Chapter 115C of the General Statutes."

SECTION 3. G.S. 114-19.2 reads as rewritten:

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

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

(a1) The Department of Justice may provide a criminal history record check to the Board of Directors of the North Carolina School of Biotechnology and Agriscience of a person who is employed at the North Carolina School of Biotechnology and Agriscience or of a person who has applied for employment at the North Carolina School of Biotechnology and Agriscience, if the employee or applicant consents to the record check. The Department may also provide a criminal history record check of school personnel as defined in G.S. 115C-229M by fingerprint card to the Board of Directors of the North Carolina School of Biotechnology and Agriscience from National Repositories of Criminal Histories, in accordance with G.S. 115C-229M. The information shall be kept confidential by the Board of Directors of the North Carolina School of Biotechnology and Agriscience as provided in G.S. 115C-229M.

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

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

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

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

SECTION 4. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.
(2) Officers and employees of the Judicial Department.
(3) Officers and employees of the General Assembly.
(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.
(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(8) Instructional and research staff, physicians, and dentists of The University of North Carolina, including the faculty of the North Carolina School of Science and Mathematics.
(8a) Employees of the North Carolina School of Biotechnology and Agriscience.
(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.
(9a) Employees of the North Carolina Cooperative Extension Service of North Carolina State University who are employed in county operations and who are not exempt pursuant to subdivision (8) or (9) of this subsection.
(10) Repealed by Session Laws 1991, c. 84, s. 1.
(11) Repealed by Session Laws 2006-66, s. 9.11(z), effective July 1, 2007.
(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.
(14) Employees of the North Carolina State Ports Authority.
(15) Employees of the North Carolina Global TransPark Authority.
(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.
(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.
(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(20) Repealed by Session Laws 2008-134, s. 73(d), effective July 28, 2008.
(21) Employees of the Clean Water Management Trust Fund.
(22) Employees of the North Carolina Turnpike Authority.
(23) The Executive Administrator and the Deputy Executive Administrator of the State Health Plan for Teachers and State Employees.
(24) Employees of the State Health Plan for Teachers and State Employees as designated by law or by the Executive Administrator of the Plan.
(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.
(26) The Executive Director, associate and assistant directors, and instructional staff of the North Carolina Teacher Academy.

(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.

(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.

(29) The Executive Director, Deputy Director, all other directors, assistant and associate directors, and center fellows of the North Carolina Center for the Advancement of Teaching."

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

SENATE BILL 125:
NC School of Biotechnology and Agriscience

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 22, 2011
Introduced by:	Sens. Brown, Hartsell	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 125 would establish the North Carolina School of Agriscience and Biotechnology, a regional high school with a special focus on agriscience and biotechnology, serving the counties of Chowan, Hyde, Tyrell, and Washington. The bill is a recommendation of the Joint Legislative Joining our Businesses and Schools (JOBS) Study Commission.***

[As introduced, this bill was identical to H264, as introduced by Rep. Glazier, which is currently in House Education.]

BILL ANALYSIS: Senate Bill 125 would establish the North Carolina School of Agriscience and Biotechnology, which would be a public school, located at the Vernon G. James Research and Extension Center in Washington County, and would serve Chowan, Hyde, Tyrell, and Washington Counties. The School would offer a course of study for a high school diploma with an emphasis on science, technology, engineering, and math, with a special focus on agriscience and biotechnology.

Section 1 of the bill would include the following provisions:

Governance. The bill would establish a Board of Directors of the North Carolina School of Agriscience and Biotechnology. The Board would be made up of the following members:

- One member from each local board of education for the participating local school administrative units (units of Chowan, Hyde, Tyrell, and Washington Counties).
- Two superintendents – one from Washington County and one selected by the superintendents of the other participating units.
- Three representatives of the business community.
- One member of the Parental Advisory Council (also established in this bill).
- The Dean of the College of Agriculture and Life Sciences at NCSU or the Dean's designee, and a president or designee selected by the Presidents of Beaufort Community College and the College of the Abermarle.

The Board would establish the course of study for the School, in accordance with student performance standards required by law and adopted by the State Board of Education; establish policies and standards for academic performance, attendance and conduct; comply with reporting requirements established by the State Board in the Uniform Education Reporting System; provide data on required testing; require compliance with laws and policies on education of children with disabilities; require the School to meet health and safety standards; apply rules and policies for issuance of driving eligibility certificates; and comply with purchase and contract statutes and regulations.

Admissions. The maximum total enrollment of the School would be 100 per grade level. Only students domiciled in a participating unit would be eligible to attend. The Board would establish admission criteria, but the criteria would have to give priority to first generation students (a student who has no parent that has completed a 2 or 4 year degree) and would have to include demonstrated academic

achievement in relevant areas, student interest in attendance, and parental support for attendance. If the number of eligible students exceeds the seats available, students would be accepted by lot.

Employees. The Board would employ and contract with a principal, teachers, and other staff. The principal would have to meet requirements for certification, unless waived by the State Board of Education. At least 50% of teachers would have to hold teacher certificates, unless waived by the State Board of Education. Employees of the Board would not be employees of the local school administrative unit and would be able to be discharged according to the terms of the employment contract.

Parental Advisory Council. The bill would establish the Parental Advisory Council to serve as a resource to the Board. Each local board of education of the participating units would appoint two members who are parents or guardians of students attending the School, and, to the extent possible, reflect the demographic composition of the participating unit. The Board would be required to consult with the Council when considering changes to the School's operations that may significantly impact students.

Funding. For each child that enrolls in the School, the State and local funds that would be allocated to the participating unit on a per pupil basis for that student, would be allocated to the School.

Transportation and food service. A participating unit that provides transportation to students in the unit would be required to provide transportation to the School for students domiciled in that unit. Washington County Schools would be required to provide food services to the School, to the extent practicable.

Criminal history record checks. The Board would be authorized to do criminal history checks on school personnel and would be required to adopt a policy on whether and under what circumstances to do criminal history checks on school personnel.

Section 2 would waive tuition for students attending the School for coursework at North Carolina community colleges and UNC constituent institutions.

Sections 3 and 4 would make conforming changes to existing statutes to include the North Carolina School of Biotechnology and Agriscience.

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

S125-SMSU-7(e2) v2

PROJECTED COSTS YEAR 1 BIOTECH/AGRISCIENCE SCHOOL
(DRAFT 3-22-11)

Re-Occuring Employee Costs

Minimal Employee salaries (with benefits included):

Administrator	$150,000
Administrative Assistant	$50,000
Custodian	$45,000
Child Nutrition Manager	$45,000
Child Nutrition Part Time	$25,000
English Teacher	$75,000
Math Teacher	$75,000
Social Studies Teacher	$75,000
Science Teacher	$75,000
	$615,000

Initial costs to support the educational program

Technology	$150,000 (Laptops, whiteboards, microscopes, calculators etc.)
Media Collection	$50,000
Student Supplies/Materials	$50,000
Administrative Costs	$40,000 (Recruitment, phones, postage, printing, travel etc...)
Utilities	$100,000
Desks, furniture	$100,000
Kitchen equipment	$100,000 (A small regular kitchen now exists, a conversion)
	$590,000

YEAR 1 PROJECTED FUNDING NEEDED: $1,205,000

PER PUPIL PROJECTED STUDENT ENROLLMENT FIGURES BASED ON STATE AND LOCAL FUNDING

NUMBER OF STUDENTS	WASHINGTON (8829)	CHOWAN (9260)	TYRRELL (10,200)
10	88,290	92,600	100,200
20	176,580	185,200	204,000
30	264870	277,800	306,000
40	353,160	370,400	408,000
50	441,450	463,000	510,000
100	882,900	926,000	1,020,000
125	1,103,625	1,157,500	1,275,000
150	1,324,350	1,389,000	1,530,000

Roster of potential speakers and miscellaneous attendees, Senate Commerce Committee Meeting on 3-22.

JOBS Commission

Lieutenant Governor Walter Dalton

As Chair of the Legislature's Joining Our Businesses and Schools Study Commission and sponsor of the Cooperative Innovative Education Initiatives Act while a member of the Senate, the Lieutenant Governor will share the vision for the regional agriscience/biotechnology regional early college high school.

School Superintendents

John Farrelly

(Superintendent, Washington County Schools) Washington would be the host LEA for the school. Farrelly will discuss the potential of the school as well as the funding challenges the school would present.

Four LEAs, including Washington, are named in legislation to create the regional early college high school, with other surrounding LEAs expressing varying levels of interest and support. Superintendents from two of the remaining three LEAs also wish to speak. They are:

Dr. Allen Smith, Edenton Chowan County Schools;

Dr. Michael Dunsmore, Tyrrell County Schools.

Economic Interests and Potential Partners

Joe Landino

(recently retired Tyrrell County Farmer) – he will represent the Ag Community (Joe started the Blackland Farm Managers Association and lobbied for the Vernon James Research Station to be built in Roper).

Art Keeney

(recently retired President/CEO of East Carolina Bank) – he will represent the business community from the banking perspective (Art will serve as the next Chairman of the NC NE Commission). He lives in Hyde County.

Paul Tine

(NE Broadband Middle Mile Non-Profit Board Member) – Paul will discuss how the new broadband middle mile (currently being installed) will enhance the region's ability to have a globally significant school, as well as how the middle mile will enable more rural students to be "connected" at their homes. Paul is a business owner from Dare County.

Vann Rogerson

(President/CEO of NC Northeast Commission) - will give the regional economic development perspective (NC Northeast Commission serves the 16 counties of the NE). I live in Martin County.

County Government in the Region

David Peoples

(County Manager for Washington County) – David will share county and local business support for the school (Vernon James is located in Washington County).

Others who will be possibly attending
, but not speaking are:

Jean Woolard (First District Representative, State Board of Education),

Tracey Johnson (Chair of the Washington Co Commissioners),

& Sam Styons (Washington County Businessman who now lives in Greenville).

NE REGIONAL SCHOOL OF AGRISCIENCE & BIOTECHNOLOGY
COMMENTS TO SENATE COMMERCE COMMITTEE
ALLAN T. SMITH, EDENTON-CHOWAN SCHOOLS
(3/22/2011)

Thank you for this opportunity to address the Committee on this very important topic for Northeast North Carolina.

First, let me say that the Edenton-Chowan Board of Education and I view the concept of a Regional School of Agriscience and Biotechnology at the Vernon James Center in the most positive light. We see the school as an opportunity to expand the horizon for our students and to open doors of possibilities they may have otherwise not even dreamed. We also recognize that the location of the school in the northeast may be of a significant benefit to the economic development of our region. Finally, northeast North Carolina and the Vernon James Center is a perfect site for this exciting venture. The level of our excitement for this project was evident in the manner in which the four school systems aggressively pursued the location of the regional early college high school. The multi-district proposal, numerous resolutions, and letters of support submitted by the Boards of Education, local governments, higher education partners, and businesses in the area testify to that fact.

We were pleased that the Regional School Planning Commission (Planning Commission) ranked the Northeast Regional School of Agriscience and Biotechnology proposal as highest among all of the applications submitted from across the state and that the JOBS Commission concurred with the Planning Commission's recommendation to locate the school at the Vernon James Center. I was also pleased that the funding recommendation by the Planning Commission was in agreement with the financial commitment within our proposal. The four school districts were very clear in our proposal that we could commit up to half (50%) of state allotted ADM funds for each student attending the regional school and that **any funding formula exceeding this commitment would be unacceptable**.

A similar funding recommendation was proposed by the Planning Commission. The Planning Commission recommended funding should be at 1.5 times the average per pupil expenditure; that participating school districts receive the same level of state support per pupil and pay 50% of that to the regional school (the exact same amount as which was specified in the multi-district proposal). The remaining funds to reach the 1.5 times average threshold was recommended by the Planning Commission to be provided though other sources.

However, the legislative proposal contained within the JOBS Commission's report and now Senate Bill 125 (North Carolina School of Biotechnology and Agriscience) ignores the financial commitment in the school systems' proposal and is contrary to the recommendations from the Planning Commission. While there are several other contradictions between the school systems' proposal and the current legislation, the most troubling is the funding model. Language in the bill would require the transfer of 100% of state **AND** 100% of local current expense dollars, based on a per pupil basis, from the participating school systems to the school.

I am also concerned that the current funding formula is insufficient to meet the mission of the school. The Planning Commission recommended that recurring funding at 1.5 times the average PPE expenditure. Neither that level of funding nor any start-up costs have been addressed in the legislation. I will defer from any further comments on this issue since John Farrelly (Washington County Superintendent) addressed this in his comments.

While Edenton-Chowan Schools is in support of the school to be located at the Vernon James Center and wishes to be an active partner, the funding formula proposed in SB 125 will exasperate what is an already untenable financial situation for the participating school systems. School systems across North Carolina and the country are bracing for unprecedented budget cuts. In my small, low wealth school system of approximately 2,300 students we are preparing for a reduction of more than $2 million in next year's operating budget or the equivalent of more than 30 teacher units. This is in addition to previous budget reductions over the past two years which resulted in the loss of 26 positions, including 7 classroom teachers. Frankly speaking, we do not have the ability to redirect existing resources. It would be imprudent for the school systems to reallocate our already depleted fiscal resources while simultaneously releasing highly capable staff members, which will undoubtedly result in diminished services for our students.

My fellow superintendents and I are here today to elicit your support in seeking resolution regarding some of the recommendations of the JOBS Commission, SB 125, and the proposal as submitted by the participating school systems. Further, to communicate that the Edenton-Chowan Board of Education cannot financially support the regional school as it is now proposed in legislation. The content of the JOBS Commission's draft report and legislation was presented to the Edenton-Chowan Board of Education at their February 7, 2011 meeting. The Board directed me to seek clarification regarding the discrepancies between the JOBS Commission's report, SB 125, and the financial commitments delineated in the multi-district proposal. By a unanimous vote, the Board of Education authorized me to withdraw Edenton-Chowan Schools as a participating school district in the Northeast Regional School of Agriscience and Biotechnology if these discrepancies are not resolved. With your assistance it is my desire that the funding issues can be resolved and this will not be necessary.

I trust the Committee understands and appreciates this position is not an indictment of the regional school or a lack of enthusiasm for the project. It is simply a matter that the Edenton-Chowan Board of Education has to establish difficult priorities and at this time our first priority is to preserve a sound system of education for the boys and girls of Chowan County.

Thank you for your time and attention this morning as well as your support of public education and the young men and women we serve.

Allan T. Smith, Ed.D.
Superintendent
Edenton-Chowan Schools

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

(NAME)	(FIRM OR AGENCY AND ADDRESS)
George Suddath	NCBEU
Zeb Alley	NRMS
Bill Soffen	CVS/Caremark
Ron Welch	CVS / Caremark
Kevin Pardue	CVS / Caremark
Gloria Johnson	CVS/Caremark
James Rider	CVS/Caremark
Mia Bailey	Electricities
Steve Warned	Gateway Mgmt.
DAVE SIMPSON	CACC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Alex Mitchell	First Citizens Bank
Paul Stork	NCRA
Jennifer Winborne	NCCOB
Karen C Mizell	NCCOB
Dixie Clinton	ally.
Cady Thomas	NCAR
Seth Rosebrock	NCDOJ
DANIEL GARNER	NCCOB
Rowe Campbell	NCCOB
Ray Grace	NCCOB
Katie Stanley	Dept of Commerce

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Hammond	OCOB
Angela Maynard	DOJ
Debbie Peterson	OCOB
Deb Williford	OCOB
Larry Daniel	OCOB
Judy Merritt	NC-OCOB
Tami Hinton	OCOB
Debbie Hamrick	NC Farm Bureau
Tracey A. Johnson	Washington Co. Comm.
[illegible]	WCHA, TA
Tony Habit	NC New Schools Project

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 22, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nusham Warwick	Warwick Associates
Amy McConkey	NC Bev Assn
Andrew Meeks	Capstrat
Leslie Coman	Capstrat
Schorr Johnson	Lt. Gov's office
Ha Nguyen	NCCOB
Amy Lancaster	SGT
DAVID PEOPLES	WASHINGTON COUNTY GOVERNMENT
John Tally	SUPT. WASH CO SCHOOLS
Jean Woodland	State Board of Ed., Dist 1
Tom HARRISON	DNP, 111 N. WATER ST Plymouth

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 22, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tim KENT	NC Beer & Wine Wholesalers
Caroline McCullen	SAS
[illegible]	Ed Lee Consultant
Vann Rogerson	NC NE Commission
ART KEELEY	" " "
Paul Time	N.E. BROAD BAND
[illegible]	NCSU
Amy [illegible]	NCSU
[illegible]	NCSBA
JOEL MAYNARD	GPM [illegible]
Jim Dahmen	BSA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul Anderson	Strategy Inc.
Katherine Joyce	NCASA
Allen T. Smith	Edenton-Chowan Schools
Michael Dunsmore	Tyrrell County Schools
Sam Styons	Washington County Business
Sandy Sawyer	WM
Joe Landino	Farmer Tyrrell County
Erik Johnson	NC: Northeast Commission, Edenton
Leann Winner	NCSBA
Angie Harris	WM
Jaime King	NCEL

Principal Clerk ____
Reading Clerk ____

Cancelled Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 24, 2011	11:00 AM	1027 LB

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 24, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 187	Require Labels for Ethanol-Blended Gasoline.	Representative Faircloth, Jr. Representative Hurley Representative Randleman
SB 130	Wine Distribution Territories.	Senator Allran Senator Blue Senator Brown

Senator Harry Brown, Chair

SENATE COMMERCE COMMITTEE
Tuesday, March 29, 2011 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 29, 2011 in room 1027 of the Legislative Building. Jamie Ammons of Fayetteville and Cameron Jernigan of Ahoskie served as pages. Twenty-two members of the committee were present. Senator Brown presided as chair.

H.B. 90- Confectioners may use up to 5% Alcohol by Vol.

Representative Ross was recognized to explain the bill which would amend the N.C. Food, Drugs, and Cosmetics Act to allow confectionery food items to contain up to 5% alcohol by volume without being deemed to be adulterated in violation of the law. Senator Newton moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 187 – Require Labels for Ethanol-Blended Gasoline

Representative Faircloth was recognized to explain the bill. It directs the Gasoline and Oil Inspection Board to adopt rules to require labeling of dispensing pumps or other devices that offer ethanol-blended gasoline for retail sale. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

Senator Apodaca took over as Chair at this point in the meeting.

S.B. 130 – Wine Distribution Territories

Senator Brown was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would prohibit a wine wholesaler from distributing wine outside the wholesaler's sales territory designated in the wholesaler's agreement with that brand, would require the wholesaler to service retail permit holders within the sales territory without discrimination, and would allow an off-premises fortified and unfortified wine permit holder to transfer wine to another off-premises wine permit holder that is under common ownership and control as the transferor. Terry Beirne, the Wine Institute's eastern counsel, was recognized to speak in oppose to the "exclusive territory language". Andy Ellen, the Retail Merchants Association's general counsel, was recognized. He stated that he had some initial concerns but new language has been adopted and the Association was okay with the bill. He also answered questions. Tim Kent, lobbyist with the NC Beer and Wine Wholesalers Association, was recognized. He thought that the bill would protect distribution jobs and promote consumer choice. Paul Powell, American Premium Beverage vice president, was recognized. He countered Ms. Beirne's remarks by stating that her concerns were with already current laws. He was available to answer

questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 11:30 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, March 29, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 90	Confectioners may use up to 5% Alcohol By Vol.	Rep. Ross
HB 187	Require Labels for Ethanol-Blended Gasoline.	Rep. Faircloth Rep. Hurley Rep. Randleman
SB 130	Wine Distribution Territories.	Sen. Allran Sen. Blue Sen. Brown

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 29, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 90	Confectioners may use up to 5% Alcohol By Vol.	Representative Ross
HB 187	Require Labels for Ethanol-Blended Gasoline.	Representative Faircloth, Jr. Representative Hurley Representative Randleman
SB 130	Wine Distribution Territories.	Senator Allran Senator Blue Senator Brown

Senator Harry Brown, Chair

HOUSE BILL 90
Committee Substitute Favorable 3/17/11

Short Title: Confectioners may use up to 5% Alcohol By Vol. (Public)

Sponsors:

Referred to:

February 15, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW CONFECTIONERS TO PRODUCE CONFECTIONERIES WHICH CONTAIN NO MORE THAN FIVE PERCENT ALCOHOL BY VOLUME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-129(3) reads as rewritten:

"(3) If it is confectionery, and:

a. Has partially or completely imbedded therein any nonnutritive object: Provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the Board of Agriculture as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; or

b. Bears or contains ~~any alcohol other than alcohol not in excess of one half of one per centum (0.5%) by volume derived solely from the use of flavoring extracts; or~~more than five percent (5%) alcohol by volume. Confectionery that contains more than five-tenths of one percent (0.5%) alcohol by volume shall conspicuously bear a label indicating alcohol content; or

c. Bears or contains any nonnutritive substance: Provided, that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Article; and provided further, that the Board may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances."

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

HOUSE BILL 90:
Confectioners may use up to 5% Alcohol By Vol

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 29, 2011
Introduced by:	Rep. Ross	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 90 would amend the N.C. Food, Drugs, and Cosmetics Act to allow confectionery food items to contain up to 5% alcohol by volume without being deemed to be adulterated in violation of the law.***

CURRENT LAW: Under G.S. 106-122 the "adulteration" or misbranding of any food, drug, device, or cosmetic is unlawful. The manufacture, sale, delivery, holding or offering, and receipt in commerce of an adulterated or misbranded product is also unlawful. Adulterated food is generally food that is impure, unsafe, or unwholesome. G.S. 106-129 specifies what foods are deemed to be adulterated. One of the factors that will cause a confection (such as candy or other sweets) to be deemed adulterated is that the item bears or contains alcohol, other than flavoring extracts that do not exceed .5% alcohol by volume. Violation of the law concerning adulterated food, drugs, or cosmetics is a Class 2 misdemeanor. Violators may also be subject to a civil penalty of up to $2,000.

BILL ANALYSIS: House Bill 90 would amend G.S. 106-129, concerning certain foods deemed to be adulterated. The bill would allow confectionery food items to bear or contain an alcohol content of up to 5% alcohol by volume. This is an increase from the current level of .5%. Any confectionery that contains more than .5% alcohol would have to be conspicuously labeled with the alcohol content.

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

Brenda Carter, counsel to the House Commerce and Job Development Subcommittee on Alcoholic Beverage Control, substantially contributed to this summary.

H90-SMSU-13(e2) v1

H

HOUSE BILL 187

Short Title:	Require Labels for Ethanol-Blended Gasoline.	(Public).
Sponsors:	Representatives Hurley, Faircloth, and Randleman (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE GASOLINE AND OIL INSPECTION BOARD TO ADOPT RULES RELATED TO THE LABELING OF DISPENSING PUMPS AND OTHER DISPENSING DEVICES THAT OFFER ETHANOL-BLENDED GASOLINE FOR RETAIL SALE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-27.2. Labels for dispensing pumps and devices offering ethanol-blended gasoline for retail sale.**

(a) The Gasoline and Oil Inspection Board shall adopt rules to require labels for all dispensing pumps and other dispensing devices that offer ethanol-blended gasoline for retail sale in North Carolina. The Board shall require the use of labels to indicate that the gasoline offered for retail sale contains either of the following:

(1) Ten percent (10%) or less ethanol by volume.

(2) Greater than ten percent (10%) ethanol by volume.

(b) Rules adopted pursuant to subsection (a) of this section may include information as to the ethanol content of blended gasoline that is more specific than the information required by subsection (a) of this section."

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

HOUSE BILL 187:
Require Labels for Ethanol-Blended Gasoline

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 29, 2011
Introduced by:	Reps. Hurley, Faircloth, Randleman	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 187 directs the Gasoline and Oil Inspection Board to adopt rules to require labeling of dispensing pumps or other devices that offer ethanol-blended gasoline for retail sale.

CURRENT LAW: Under current law, The Gasoline and Oil Inspection Board is authorized to require the labeling of dispensing pumps or other dispensing devices and to determine the form of any required label. The Board has adopted a rule that motor fuel retailers are only required to place a label on the dispensing device with the registered brand name if the gasoline offered for retail contains 10% or less of ethanol by volume. There is no requirement that the label indicate that the gasoline is an ethanol-blend of up to 10 percent. (02 NCAC 42.0401)

BILL ANALYSIS: House Bill 187 directs the Gasoline and Oil Inspection Board to adopt rules to require the use of labels on dispensing devices to indicate that the gasoline contains either:

- 10% or less ethanol by volume.
- Greater than 10% ethanol by volume.

The Board is authorized, but not required, to adopt rules that are more specific with regard to the ethanol content of blended gasoline.

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

BACKGROUND: According to a 2007 report of the American Coalition for Ethanol, 37 states have enacted laws that require pumps to be labeled for ethanol-blended gasoline. Some states require labeling gasoline pumps that have any percentage of ethanol. Other states have a threshold level of ethanol blend at which amount labeling is required.

02 NCAC 42 .0401 LABELING OF DISPENSING DEVICES

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be plainly and conspicuously labeled with the following:

(1) For gasoline and gasoline-alcohol blends of up to 10 percent ethanol, the registered brand name;

(2) For diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;

(3) For biodiesel and biodiesel blends, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;

(4) For gasoline-oxygenate blends containing at least one percent by volume of methanol, the registered brand name plus an additional label which states that the blend "contains methanol." The label shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:

(A) For fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol or methanol in the blend; and

(B) For fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is required;

(5) For E85 fuel ethanol, the registered brand name.

(b) Each dispensing device used in the retailing of products other than motor fuel shall be plainly and conspicuously labeled as follows:

(1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:

(A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters"; or

(B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters";

(2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.

(c) Whenever a motor fuel or other product provided for in this Section is offered for sale, sold, or delivered at retail in barrels, casks, cans, or other containers, each container shall be labeled in accordance with this Section and in accordance with 15 U.S.C. 1451 et. seq., the Fair Packaging and Labeling Act.

(d) If a dispenser is so designed that one or more hoses connected to a common housing dispense more than one type or grade of product, means shall be provided to indicate the identity of the product being dispensed from the hose.

Jennifer Mundt, staff to House Environment, substantially contributed to this summary.

H187-SMTD-16(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 130
PROPOSED COMMITTEE SUBSTITUTE S130-CSMA-10 [v.3]

3/28/2011 11:04:12 AM

Short Title: Wine Distribution Territories. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN INTRA-TERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE PERMITTEES UNDER COMMON OWNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1201(2) reads as rewritten:

"(2) "Territory" or "sales territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between any wine wholesaler and winery for a brand offered by any winery. ~~The term "area of primary sales responsibility" may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory.~~"

SECTION 2. G.S. 18B-1203 reads as rewritten:

"**§ 18B-1203. Primary area of ~~responsibility.~~responsibility; no discrimination.**

(a) Each agreement shall designate ~~a~~ the sales territory of the wholesaler. No winery may enter into more than one agreement for each brand of wine or beverage it offers in any ~~territory unless the Commission, using the standards of G.S. 18B-1204(4), orders otherwise. Territories served by a wine wholesaler on March 21, 1983, are designated sales territories within the meaning of this section. Within 30 days of the effective date of this Article, each winery shall notify the Commission in writing of all designations of sales territories as of March 21, 1983.~~territory. A wholesaler shall not distribute any brand of wine to a retailer whose premises are located outside the territory designated in the wholesaler's agreement for that brand. With the approval of the Commission, a wholesaler may distribute wine outside the wholesaler's designated territory during periods of temporary service interruption, when requested to do so by the winery and the wholesaler whose service is interrupted. Unless the winery and wine wholesaler agree otherwise in writing, the territory designated as the wholesaler's "area of primary sales responsibility" as of the effective date of this section shall be the wholesaler's designated sales territory. Redesignations of sales territories occurring after ~~March 21, 1983,~~July 1, 2011 shall be reported to the Commission within 30 days. No provisions of this Article, however, may prohibit the continuation of a multi-wholesaler agreement entered into before March 21, 1983, as between the winery and the original wine wholesalers ~~thereto.~~thereto, provided, that upon termination of any such agreement the affected territory shall be designated for a single wholesaler.

(b) ~~This section may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory.~~ A wholesaler shall service retail permit holders within its designated territory without discrimination. Upon request from a retail permit holder each wholesaler shall make a good faith effort to make available any brand of wine the wholesaler is authorized to distribute in the territory."

SECTION 3. G.S. 18B-1001(4) reads as rewritten:

"(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another off-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format, and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The permit may also be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision."

SECTION 4. G.S. 18B-1001(6) reads as rewritten:

"(6) Off-Premises Fortified Wine Permit. – An off-premises fortified wine permit authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine. Orders received by a winery by telephone, Internet, mail, facsimile, or other

off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit also authorizes the permittee to transfer fortified wine, not more than four times per calendar year, to another off-premises fortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises fortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format, and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law, and its provisions shall apply to all existing franchise agreements. A winery's shipment of wine to a wholesaler in North Carolina following the effective date of this act shall constitute acceptance by the winery of the terms of this act, which shall be considered incorporated into the agreement between the winery and wholesaler.

SENATE BILL 130:
Wine Distribution Territories

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	March 28, 2011
Introduced by:	Sens. Brown, Allran, Blue	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S130-CSMA-10		

SUMMARY: ***SB130 would prohibit a wine wholesaler from distributing wine outside the wholesaler's sales territory designated in the wholesaler's agreement with that brand, would require the wholesaler to service retail permit holders within the sales territory without discrimination, and would allow an off-premises fortified and unfortified wine permit holder to transfer wine to another off-premises wine permit holder that is under common ownership and control as the transferor.***

CURRENT LAW: Article 12 (Wine Distribution Agreements) of Chapter 18B (Regulation of Alcoholic Beverages) provides the system by which wine may be distributed in North Carolina. G.S. 18B-1203 provides that a wholesaler must enter into an agreement with a winery that designates a sales territory for that wholesaler. However, a wine wholesaler may sell or attempt to sell that brand of wine outside that wholesaler's sales territory.

G.S. 18B-1001 sets out the types of ABC permits the North Carolina Alcoholic Beverage Control Commission may issue. Among those are Off-Premises Unfortified Wine and Off-Premises Fortified Wine. These permits authorize the retail sale of fortified and unfortified wine in the manufacturer's original container for consumption off premises. It also authorizes the permit holder to ship the wine in closed containers to individual purchasers outside North Carolina.

BILL ANALYSIS:

Section 1 amends the definition of "territory" or "sales territory" to remove the language that allowed a wine wholesaler may sell or attempt to sell that brand of wine outside that wholesaler's sales territory.

Section 2 amends G.S. 18B-1203 to prohibit a wine wholesaler from distributing any brand of wine to a retailer located outside the wholesaler's sales territory for that brand. This proposed change would make the North Carolina's law related to wine distribution parallel to the laws related to beer distribution. However, a wholesaler could, with the permission of the Commission, distribute wine outside the sales territory when there has been a temporary service interruption. The bill also provides that a wholesaler shall service retail permit holders within the sales territory on a nondiscriminatory basis.

Sections 3 and 4 amend G.S. 18B-1001 to allow both off-premises fortified wine and off-premises unfortified wine permittees to transfer wine to another off-premises permittee if the other permittee is under the same ownership or control as the transferor. Transfers of this sort may occur no more than 4 times a year and prior to the transfer the transferor must notify each wholesaler who distributes the product of the transfer. The notice must be in writing, must identify the transferor and the transferee, and must set out the date, quantity and items transferred.

Section 5 is a severability clause.

EFFECTIVE DATE: This act is effective when it becomes law and its provisions apply to all existing franchise agreements. Acceptance of a winery's shipment of wine to a wholesaler following the effective date constitutes acceptance of the terms of this act.

S130-SMRC-14(CSMA-10) v1

PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027

DATE: 3-29 **TIME:** 11 Am

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

Page Name	Hometown	Sponsoring Senator
1 Jamie Amons	Fayetteville	Eric Mansfield
2 Cameron Jernigan	Ahoskie	Ed Jones
4		
5		
6		
7		
8		
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10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 29, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NC Petroleum & C-stores
Phillip Jackson	NC Bar Assoc
Dick Archie	NC Bar Assoc
Courtney Denning	NC Bar Assoc
Stephanie McCrae	NC Bar Assoc
Mary Horowitz	N.C. Bar Association
Stephen Benjamin	NC DA&CS
Mia Bailey	Electri Cities
[illegible]	SA
Rev. Mark Creech	CAL
Ray Starling	NCDA&CS

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 29, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Debbie Hildebran-Bachofen	NCBA (Manning Fulton & Skinner PA)
Lynda Imhoff	NC Bar Association
Brad Williams	NC Bar Association
Monica Webb	NC Bar Assoc.
Dana Sipe	Smith Anderson
Kenny Jones	Jordan Price, et.
Andy Keller	[illegible]
Michelle Frazier	MF+S
Jina Propst	NC Bar association
Jennifer Jones	NCBA
Roberta King	NC Bar Assoc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 29, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	Nationwide
Chris Valauri	NC Beer & Wine Wholesalers Assoc
Kristen Laster	Fetzer Strategic
Sherry Honeycutt Everett	NCBA
Sam Forehand	NCBA
Chuck Montgomery	NCBA
Elizabeth Robinson	NARMA
	MWC
Bo Heath	McGuireWoods
Wendy Kelly	Policy Group
	staff
John Polkowski	NCAHA

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 29, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lora Ann Harris	CAHA
Rep. John Faircloth	House
DAVID BARNES	
Joyce Peters	JPASSA
	NCBA
	ACASA
OLIVIA POTTER	VISITOR
Ken Melton	K.M.A.
Bill McAulay	PSNC Energy
LeAnn Brown	NCBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

March 29, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dean Plunkett	PS
Thomas Moore	Edmisten Moore Chandler
Katie Hallaway	Lowe's
Katie Stanley	NC Dep't of Commerce
Nancy Thompson	weyerhaeuser
Ashley Campbell	Reynolds Liggett
Sherman McCoy	Nationwide
Barbara Canales	Beer
Paul Powell	Amer. Prem. Bev.
Tim KENT	NC Beer & Wine
KRIS GARDNER	11

Principal Clerk
Reading Clerk

Cancelled Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 14, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 144	Cash Converters Must Keep Purchase Records.	Senator Meredith
SB 405	Amend Irrigation Contractors' Licensing Laws.	Senator Hartsell Senator Brown

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

Corrected: SB 144 – Cash Converters Must Keep Purchase Records has been added to the agenda.

SENATE
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AND
BILL SPONSOR NOTICE

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SB 293	Catawba Ecocomplex Renewable Energy.	Senator Allran
SB 405	Amend Irrigation Contractors' Licensing Laws.	Senator Hartsell Senator Brown

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
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Senator Harry Brown, Chair

SENATE COMMERCE COMMITTEE
Tuesday, April 26, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 26, 2011 in room 1027 of the Legislative Building. Zachary Johnson of Siler City, Blake Scruggs of Chapel Hill, Drew Connery of Charlotte, Marques McPhail of Goldsboro, Joseph Clay of Ellenboro, and Bailey Sherrill of Hiddenite served as pages. Twenty-six members of the committee were present. Senator Brown presided as chair.

S.B. 144 – Cash Converters Must Keep Purchase Records

Senator Meredith was recognized to explain the bill. Senator Vaughan moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS clarifies that a cash converter has a duty to not purchase property that is known to be stolen and also clarifies that criminal penalties apply if a cash converter fails to keep the required records. Kory Goldsmith, a staff attorney with the Research Division, was recognized to answer questions. Senator Davis offered an amendment to include children's items. Katie Nyland, representing the resale industry, was recognized to object to the amendment. Elizabeth Dalton, a lobbyist for the Retail Merchants Association, was recognized to answer questions. Senator Stein offered a perfecting amendment to Senator Davis's amendment. After much discussion, the bill was pulled to perfect. A copy of the PCS, the summary and the amendments is attached.

S.B. 125 – NC School of Biotechnology and Agriscience

Senator Hartsell was recognized to explain the PCS and Senator Stevens moved to adopt the PCS for discussion. The PCS would permit local boards of education to jointly establish regional schools and attempts to address funding issues. Senator Stein was recognized to offer an amendment which would outline transportation responsibilities. Michael McLaughlin, with the Lt. Governor's office, was recognized to answer questions. Senator Stein pulled his amendment to offer a second perfected amendment, which outlined transportation responsibilities. Senator Stein moved to adopt the amendment and the motion carried. Senator McKissick moved for a favorable report. The motion carried. A copy of the PCS, the summary, and the amendments is attached.

The meeting adjourned at 11:52 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, April 26, 2011

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

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

S.B. **125** NC School of Biotechnology and Agriscience.

Draft Number:	55287
Sequential Referral:	None
Recommended Referral:	Pensions & Retirement and Aging
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, April 26, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 125	NC School of Biotechnology and Agriscience.	Sen. Hartsell Sen. Brown
SB 144	Cash Converters Must Keep Purchase Records.	Sen. Meredith
SB 366	Manufactured Home Titling Changes.	Sen. Newton Sen. Goolsby Sen. Daniel
SB 405	Amend Irrigation Contractors' Licensing Laws.	Sen. Hartsell Sen. Brown
SB 438	Clarify Motor Vehicle Licensing Law.	Sen. Apodaca
SB 709	Energy Jobs Act.	Sen. Brown Sen. Rucho Sen. Tucker

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 144
PROPOSED COMMITTEE SUBSTITUTE S144-CSRC-12 [v.4]

Short Title: Cash Converters Must Keep Purchase Records. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CASH CONVERTER BUSINESSES TO KEEP RECORDS OF PURCHASES AND TO MAKE THOSE RECORDS AVAILABLE TO LOCAL LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Chapter 91A of the General Statutes reads as rewritten:

"**Pawnbrokers and Cash Converters Modernization ~~Act of 1989.~~Act.**"

SECTION 2. G.S. 91A-1 reads as rewritten:

"**§ 91A-1. Short title.**

This Chapter shall be known and may be cited as the Pawnbrokers and Cash Converters Modernization ~~Act of 1989.~~Act."

SECTION 3. G.S. 91A-2 reads as rewritten:

"**§ 91A-2. Purpose.**

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops and cash converters vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act ~~of 1989 to:~~to do all of the following:

(1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating ~~pawnbrokers;~~ pawnbrokers.

(1a) Ensure a sound system of acquiring and disposing of tangible personal property by and through cash converters and to prevent unlawful property transactions, particularly in stolen property, by requiring record keeping by cash converters.

(2) Provide for pawnbroker licensing fees and investigation fees of ~~licensees;~~licensees.

(3) Ensure financial responsibility to the State and the general ~~public;~~public.

(4) Ensure compliance with federal and State ~~laws; and~~laws.

(5) Assist local governments in the exercise of their police authority."

SECTION 4. G.S. 91A-3 reads as rewritten:

"**§ 91A-3. Definitions.**

~~As used in this Article, the following definitions shall apply:~~The following definitions apply in this Chapter:

(1) Cash. – Lawful currency of the United States.

(2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. Pawnbrokers.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under Article 25 of Chapter 66 of the General Statutes.

~~(1)~~(3) ~~"Pawn" or "Pawn transaction" means a~~ Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

~~(2)~~(4) ~~"Pawnbroker" means any~~ Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

~~(3)~~(5) ~~"Pawnshop" means the~~ Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.

~~(4)~~(6) ~~"Person" means any~~ Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.

~~(5)~~(7) ~~"Pledged goods" means tangible~~ Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

~~(6)~~(8) ~~"Purchase" means any~~ Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."

SECTION 5. The catch line of G.S. 91A-7 reads as rewritten:

"§ 91A-7. ~~**Record keeping requirements.**~~ **Record-keeping requirements for pawnbrokers.**"

SECTION 6. Chapter 91A of the General Statutes is amended by adding a new section to read:

"**§ 91A-7.1. Record-keeping requirements for cash converters.**

(a) Every cash converter shall keep consecutively numbered records of each cash purchase. The cash converter shall, at the time of making the purchase, enter upon each record all of the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.

(2) The name, residence address, phone number, and date of birth of the seller.

(3) The date of the purchase.

(4) The type of identification and the identification number accepted from the seller.

(5) A description of the seller, including approximate height, weight, sex, and race.

(6) The purchase price.

(7) The statement that 'THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL.'

(b) The seller shall sign the record and shall receive an exact copy of the record, which shall be signed or initialed by the cash converter or any employee of the cash converter. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the sheriff's designee or the chief of police or the chief's designee of the municipality in which the cash converter is located. These records may be electronically reported to the sheriff of the county or the chief of police of the municipality in which the cash converter is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. These records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours.

(c) This section does not apply to purchases directly from a manufacturer or wholesaler for a cash converter's inventory."

SECTION 7. G.S. 91A-10 reads as rewritten:

"**§ 91A-10. Prohibitions.**

(a) A pawnbroker shall not:

(1) Accept a pledge from a person under the age of 18 ~~years;~~years.

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn ~~transaction;~~transaction.

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this ~~Chapter;~~ Chapter.

(4) Fail to exercise reasonable care to protect pledged goods from loss or ~~damage;~~ damage.

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to ~~G.S. 91A-7(b);~~ G.S. 91A-7(b).

(6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State ~~police;~~police.

(7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with G.S. 91A-7(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from ~~wholesalers;~~wholesalers.

(8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of ~~business; or~~ business.

(9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle.

(b) A cash converter shall not purchase from any person property which is known to the cash converter to be stolen, unless there is a written agreement with local or State police."

SECTION 8. G.S. 91A-11 reads as rewritten:

"**§ 91A-11. Penalties.**

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this Chapter, shall, on conviction thereof, be deemed guilty of a

Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) shall not apply to violations of ~~G.S. 91A-10(6)~~ G.S. 91A-10(a)(6) or (b) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this Chapter, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn."

SECTION 9. G.S. 25-9-201(b) reads as rewritten:

"(b) Applicable consumer laws and other law. – A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash Converters Modernization Act ~~of 1989~~ (Chapter 91A of the General Statutes)."

SECTION 10. This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

SENATE BILL 144:
Cash Converters Must Keep Purchase Records

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 18, 2011
Introduced by:	Sen. Meredith	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S144-CSRC-12		

SUMMARY: ***SB144 would regulate businesses that purchase goods from individuals for cash ("cash converters") by amending the Pawnbrokers Modernization Act of 1989 to require that cash converters keep records of cash purchases for inspection by law enforcement. Failure to keep the required records would be a Class 2 misdemeanor. If a cash converter knowingly purchases stolen goods, he or she would be prosecuted under existing law related to receipt and possession of stolen goods. The act does not require cash converters to be licensed.***

The PCS clarifies that a cash converter has a duty to not purchase property that is known to be stolen and also clarifies that criminal penalties apply if a cash converter fails to keep the required records.

CURRENT LAW: Chapter 91A of the General Statutes provides that any business that conducts itself as a pawnbroker must be licensed by the municipality or county where the business is located. A pawnbroker is a person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders. Pawnbrokers must keep consecutively numbered records of each pawn transaction including: a description of the item being pawned; the name, address, telephone number and date of birth of the person pledging the pawned item; the date of the transaction; the type of identification provided by the person pledging the goods; a description of the pledger; the amount of money advanced; the date due and amount charged; all pawn charges including interest; and the agreed upon value of the pledged item. Among other things, a pawnbroker is prohibited from taking any item in pledge that the pawnbroker knows or has reason to know is stolen. Knowing violations of Chapter 91A are punishable as Class 2 misdemeanors, but receipt of stolen goods is punishable as a Class H felony under G.S. 14-71, G.S. 14-71.1 and G.S. 14-72(b) respectively (receipt and/or possession of stolen goods) provided the person receiving or possessing the goods knew or had reasonable grounds to believe the goods were stolen.

BILL ANALYSIS: SB144 would amend the Pawnbroker Modernization Act of 1989 to create a class of businesses known as "cash converters". A cash converter is defined as a person engaged in the business of purchasing goods from the public for cash and who is permanently located in a retail store that holds himself out to the public as engaging the cash converting business. The definition does not apply to pawnbrokers, persons who purchase goods directly from manufacturers or wholesalers, or precious metal dealers to the extent their transactions are regulated under Article 15 of Chapter 66 (Regulation of Precious Metal Businesses).

A cash converter must keep consecutively numbered records of each cash purchase including: a description of the item purchased; the name, address, telephone number and date of birth of the seller; the date of the transaction; the type of identification provided by the seller; a description of the seller including height, weight, sex and race; the purchase price; and a statement signed by the seller that the item is not stolen, has no liens or encumbrances, and is the seller's to sell. The seller must receive an exact copy of the record, and the cash converter must keep the records available for inspection and

pickup by local law enforcement during regular business hours. A cash converter is prohibited from purchasing property which the cash converter knows is stolen.

A violation of the record keeping requirements by a cash converter would be a Class 2 misdemeanor. Receiving or possession stolen goods would be punishable under G.S. 14-71, 14-71.1 and/or 14-72(b) as applicable.

SB144 does not require cash converters to be licensed by the city or county where the business is located.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

S144-SMRC-18(CSRC-12) v5

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/26/2011

S. B. No. 144 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Davis
Sen.)

moves to amend the bill on page 2, lines 12-13

( ) WHICH CHANGES THE TITLE

by inserting the following between the lines

"d. Persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture and children's products, provided each individual item is purchased for less than fifty dollars ($50).

e. Persons primarily in the business of obtaining from the public sporting goods and sporting equipment provided each individual item is purchased for less than fifty dollars ($50)."

~~for~~ ~~less than~~ ~~($50).~~ ~~each.~~

Shin's language →

~~is purchased for less than fifty dollars ($50).~~

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 125*
Corrected Copy 3/1/11
PROPOSED COMMITTEE SUBSTITUTE S125-CSTC-10 [v.2]

4/25/2011 9:58:30 AM

Short Title: Regional Schools. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL BOARDS OF EDUCATION TO JOINTLY ESTABLISH REGIONAL SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 10. Regional Schools.

"**§ 115C-238.56A. Purpose.**

(a) The purpose of this Part is to authorize local boards of education to jointly establish a regional school to serve enrolled students in two or more local school administrative units that will expand student opportunities for educational success through high quality instructional programming. Regional schools may include partnerships with other education partners, including institutions of higher education and private businesses or organizations, and shall foster, encourage, and promote the development of knowledge and skills in career clusters of critical importance to the region.

(b) Except as otherwise provided in this Part, a regional school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

"**§ 115C-238.56B. Definitions.**

The following definitions apply in this Part:

(1) First generation student. – A student who has no parent who has completed a two- or four-year degree.

(2) Participating units. – A local school administrative unit whose local board of education has adopted a resolution to create a regional school that has been approved by the State Board of Education.

(3) Principal. – The principal of a regional school.

"**§ 115C-238.56C. Creation of Regional School.**

(a) Resolution to Create a Regional School. – Any two or more local board of education may create a regional school as provided in this Part. In order to create a regional school, each local board of education shall adopt a resolution stating their intent to create the regional school, which shall include the following:

(1) Name of the regional school.

(2) Names of all other local boards of education known to that local board of education adopting resolutions to create the regional school.

(3) Identification of one of the named local school administrative units to serve as the finance agent for the regional school.

(4) Identification of one of the named local school administrative units to provide, to the extent practicable, school food services to the regional school, if needed.

The local board of education may also agree by resolution to provide transportation to the regional school for students domiciled within the local school administrative unit.

(b) Recognition of Regional School. – Each local board of education that adopts a resolution as provided in this section shall file a copy of the resolution with the State Board of Education. Upon receipt of resolutions from all local boards of education identified in each resolution for a named regional school, the State Board of Education shall approve the creation of the regional school.

(c) Expansion of Regional School. – A local board of education may adopt a resolution stating their intent to join an existing regional school, which shall include the name of the regional school and the names of all other local boards of education which have previously adopted resolutions to create the regional school. The local board of education shall file a copy of the resolution with the State Board of Education. Following receipt of the petition and after receiving comment from the regional school board of directors, the State Board of Education may approve the expansion of the regional school.

"**§ 115C-238.56D. Regional School Boards of Directors; appointment; terms of office.**

(a) Appointment. – A board of directors for a regional school shall consist of the following members. Appointed members of the board of directors shall be selected for their interest in and commitment to the importance of public education to regional economic development and to the purposes of the regional school.

(1) Local boards of education. – Each participating unit shall appoint one member to the board of directors from among the membership of the local board of education. Members appointed by local boards of education shall serve terms of four years.

(2) Local superintendents. – The local superintendent of the local school administrative unit identified as the finance agent for the regional school shall serve as an ex officio member of the board of directors. One additional superintendent shall be selected from among the superintendents of the participating units by those superintendents. The additional superintendent shall serve an initial term of two years. Subsequent appointments shall serve a term of four years.

(3) Economic development region. – The Economic Development Regional Partnership for the economic development region in which the regional school is located shall appoint three members as representatives of the business community. At least one of the appointees shall be a resident of the county in which the regional school is located. The appointees shall serve an initial term of two years. Subsequent appointees shall serve a term of four years.

(4) Parent Advisory Council. – The Parent Advisory Council established by G.S. 115C-238.56J shall appoint a member to the board of directors from among the Council membership. The member appointed by the Council shall serve a term of four years, or until the child of the parent no longer attends the regional school.

(5) Higher education partners. – Any institution of higher education partner may appoint a representative of the institution of higher education to serve as an ex officio member of the board of directors.

(b) Vacancies. – Whenever an appointed member of the board of directors shall fail for any reason other than ill health or service in the interest of the State or nation to be present at three successive regular meetings of the board of directors, his or her place as a member of the board of directors shall be deemed vacant. Any member of the board of directors may be removed from office by the appointing authority for misfeasance, malfeasance, or nonfeasance in office. All vacancies shall be filled by the appointing authority for the remainder of the term of office.

"**§ 115C-238.56E. Board of Directors; meetings; rules of procedure; officers.**

(a) The board of directors shall meet at least four times a year and may hold special meetings at any time, at the call of the chair or upon petition addressed to the chair by a majority of the members of the board of directors. All meetings of the board of directors shall be subject to the requirements of Article 33C of Chapter 143 of the General Statutes.

(b) The board of directors shall elect a chair and a vice-chair from among its members, who shall serve a two-year term.

(c) All members of the board of directors shall be voting members except for the chair, who may vote only on matters to break a tie.

(d) The board of directors shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(e) Members of the board of directors shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions.

"**§ 115C-238.56F. Board of Directors; corporate powers.**

(a) The board of directors of the regional school shall be known and distinguished by the name of 'The _____ Regional School Board of Directors' and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the regional school, and to apply to same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the regional school, and shall have power to receive donations from any source whatsoever, to be devoted exclusively to the purposes of the maintenance of the regional school, or according to the terms of the donation.

(b) The board of directors shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions; and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

"**§ 115C-238.56G. Board of Directors; powers and duties.**

The board of directors shall have the following powers and duties:

(1) Academic program. –

a. The board of directors shall establish the standard course of study for the regional school. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade. The board of directors shall design its programs to meet at least the student performance standards adopted by the State Board of Education and the student performance standards contained in this Chapter.

b. The board of directors shall conduct student assessments required by the State Board of Education.

c. The board of directors shall provide the opportunity to earn or obtain credit toward degrees from a community college subject to Chapter 115D of the General Statutes or a constituent institution of The University of North Carolina.

d. The board of directors shall adopt a school calendar consisting of a minimum of 180 days of instruction covering at least nine calendar months.

(2) Standards of performance and conduct. – The board of directors shall establish policies and standards for academic performance, attendance, and conduct for students of the regional school. The policies of the board of directors shall comply with Article 27 of this Chapter.

(3) School attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the regional school and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the regional school shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the regional school. Any person who aids or abets a student's unlawful absence from the regional school shall, upon conviction, be guilty of a Class 1 misdemeanor. The principal shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the board of directors, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(4) Reporting. – The board of directors shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(5) Assessment results. – The board of directors shall provide data to the participating unit in which a student is domiciled on the performance of that student on any testing required by the State Board of Education.

(6) Education of children with disabilities. – The board of directors shall require compliance with laws and policies relating to the education of children with disabilities.

(7) Health and safety. – The board of directors shall require that the regional school meet the same health and safety standards required of a local school administrative unit.

(8) Driving eligibility certificates. – The board of directors shall apply the rules and policies established by the State Board of Education for issuance of driving eligibility certificates.

(9) Purchasing and contracts. – The board of directors shall comply with the purchasing and contract statutes and regulations applicable to local school administrative units.

(10) Exemption from the Administrative Procedures Act. – The board of directors shall be exempt from Chapter 150B of the General Statutes, except final decisions of the board of directors in a contested case shall be subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

"**§ 115C-238.56H. Student admissions and assignment.**

(a) Residency Requirement. – A student shall be domiciled in a participating unit to be eligible to attend the regional school. A student's eligibility to remain enrolled in the regional

school shall terminate at the end of any school year during which a student ceases to satisfy the residency requirements.

(b) Participating Unit Allotments. – The number of student seats in the freshman class of the regional school shall be assigned proportionate to the total student population of the participating units, as determined by the participating unit's final average daily membership in the preceding school year. If fewer students residing in a participating unit elect to attend the regional school than available allotted seats, the remaining seats shall be divided proportionally among the other participating units.

(c) Admissions Criteria. – The board of directors shall establish criteria, standards, and procedures for admission of students. The admission criteria may give priority to first generation students, and shall include the following:

(1) Demonstrated academic achievement.

(2) Demonstrated student interest in attendance.

(3) Documented parental support for student attendance.

(d) Lottery. – If the number of eligible students meeting the board of directors' admission criteria exceeds the seats available through the participating unit allotment, students shall be accepted by lot.

"**§ 115C-238.56I. Employees.**

The board of directors shall appoint all certified and noncertified staff.

(1) Principal. – The board of directors shall employ and contract with a principal for a term not to exceed three years. The principal shall meet the requirements for certification set out in G.S. 115C-284, unless waived by the State Board of Education upon submission of a request by the board of directors. The principal shall be responsible for school operations and shall exercise those duties and powers delegated by the board of directors.

(2) Teachers. – The board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school. At least fifty percent (50%) of teachers employed by the board of directors shall hold teacher certificates, unless waived by the State Board of Education upon submission of a request by the board of directors.

(3) Career status. – Employees of the board of directors shall not be eligible for career status. If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at the regional school, the local school administrative unit shall grant the leave for one year. For the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of the regional school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of absence to teach at the regional school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the regional school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers, and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) Noncertified staff. – The board of directors also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services.

(5) Employment dismissal. – An employee of the board of directors is not an employee of the local school administrative unit in which the regional school is located. The board of directors may discharge certified and noncertified employees according to the terms of the employment contract.

(6) Employee benefits. – Employees of the board of directors shall participate in the Teachers' and State Employees' Retirement System and the State Health Plan on the same terms as employees employed by local boards of education.

(7) Exemptions. – Employees of the board of directors shall be exempt from Chapter 126 of the General Statutes, except Articles 6 and 7.

"**§ 115C-238.56J. Parent Advisory Council, purpose, appointments.**

(a) Purpose. – There shall be a Parent Advisory Council to serve as a resource and provide input to the board of directors as to the operation of a regional school. The board of directors shall consult the Parent Advisory Council when considering changes to the regional school's operations that may significantly impact students attending the regional school.

(b) Appointment. – Each local board of education of the participating units shall appoint two members to the Parent Advisory Council for a term of four years or until the member's child no longer attends the regional school. Appointees shall be parents or guardians of students attending the regional school and shall, to the extent possible, reflect the demographic composition of the participating units.

"**§ 115C-238.56K. State and local funds.**

(a) The State Board of Education shall allocate to a regional school:

(1) An amount equal to the average per pupil allocation for average daily membership from the participating unit allotments for each child attending the regional school, except for the allocation for children with disabilities and for the allocation for children with limited English proficiency.

(2) An additional amount for each child attending the regional school who is a child with disabilities. In the event a child with disabilities leaves the regional school and enrolls in a public school during the first 60 school days in the school year, the regional school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in the regional school during the first 60 school days in the school year, the State Board shall allocate to the regional school the pro rata amount of additional funds for children with disabilities.

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

(b) The State Board shall allow for annual adjustments to the amount allocated to the regional school based on its enrollment growth in school years subsequent to the initial year of operation.

(c) For each child who enrolls in the regional school, the participating unit in which the child resides shall transfer to the regional school an amount equal to the per pupil amount of all money appropriated to the local current expense fund for the participating unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only if the child enrolled in the regional school resides in that tax district.

"**§ 115C-238.56L. Finance and budget.**

(a) The local school administrative unit identified as the finance agent by resolution pursuant to G.S. 115C-238.56C shall be the finance agent for the Board and shall have all the rights, duties, and obligations for receipt, accounting, and dispersing funds for the board of directors, including all the rights, duties, and obligations specified in Article 31 of this Chapter, which powers shall be exercised by the identified local school administrative unit for and on behalf of the board of directors. The board of directors shall provide reasonable compensation to the local school administrative unit for this service.

(b) No later than 10 days after the money is appropriated to the local current expense fund, each local board of education of a participating unit shall transfer to the board of directors the amount required under G.S. 115C-238.56K(c) for each child enrolled in the School who resides in that participating unit. Once it has received funds from the local board of education, the board of directors shall be under no obligation to return the funds.

"**§ 115C-238.56M. Participating units.**

(a) Transportation. – A participating unit which otherwise provides transportation to students enrolled in that unit may provide transportation to students domiciled within the participating unit to the regional school.

(b) Food Service. – The local school administrative unit identified by resolution shall provide, to the extent practicable, school food services to the regional school. For purposes of federal funding through the National School Lunch Program or other federally supported food service programs, the local school administrative unit identified by resolution shall be permitted to include eligible students enrolled in the regional school. Other participating units shall not include students enrolled in the regional school for purposes of federally supported food service programs.

"**§ 115C-238.56N. Criminal history record checks.**

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to

the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'School personnel' means any of the following:

a. Member of the board of directors.

b. Employee of the regional school.

c. Independent contractor or employee of an independent contractor of the regional school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of the regional school.

(b) The board of directors shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The board of directors shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The board of directors may grant conditional approval of an application while the board of directors is checking a person's criminal history and making a decision based on the results of the check.

The board of directors shall not require school personnel to pay for the criminal history record check authorized under this section.

(c) The board of directors shall require the person to be checked by the Department of Justice (i) to be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the board of directors or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) to sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The board of directors shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the board of directors the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the board of directors requires a criminal history record check.

The board of directors shall not require school personnel to pay for the fingerprints authorized under this section.

(d) The board of directors shall review the criminal history it receives on an individual. The board of directors shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The board of directors shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The board of directors may delegate any of the duties in this subsection to the principal.

(e) The board of directors, or the principal if designated by the board of directors, shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the board of directors through the checking of the criminal history or by the State Board of Education in accordance with this section is privileged

information and is not a public record but is for the exclusive use of the board of directors or the State Board of Education. The board of directors or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

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

(h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 2. G.S. 114-19.2 reads as rewritten:

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

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

(a1) The Department of Justice may provide a criminal history record check to the board of directors of a regional school of a person who is employed at a regional school or of a person who has applied for employment at a regional school, if the employee or applicant consents to the record check. The Department may also provide a criminal history record check of school personnel as defined in G.S. 115C-238.56N by fingerprint card to the board of directors of the regional school from the National Repositories of Criminal Histories, in accordance with G.S. 115C-238.56N. The information shall be kept confidential by the board of directors of of the regional school as provided in G.S. 115C-238.56N.

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

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

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

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

SECTION 3. G.S. 115B-2(a) reads as rewritten:

"**§ 115B-2. Tuition waiver authorized.**

(a) The constituent institutions of The University of North Carolina and the community colleges as defined in G.S. 115D-2(2) shall permit the following persons to attend classes for credit or noncredit purposes without the required payment of tuition:

(1) Repealed by Session Laws 2009-451, s. 8.11(a), effective July 1, 2009.

(2) Any person who is the survivor of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker killed as a direct result of a traumatic injury sustained in the line of duty.

(3) The spouse of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty.

(4) Any child, if the child is at least 17 years old but not yet 24 years old, whose parent is a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty. However, a child's eligibility for a waiver of tuition under this Chapter shall not exceed: (i) 54 months, if the child is seeking a baccalaureate degree, or (ii) if the child is not seeking a baccalaureate degree, the number of months required to complete the educational program to which the child is applying.

(5) Any child, if the child (i) is at least 17 years old but not yet 24 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, (iii) is a resident of the State; and (iv) is eligible for services under the Chaffee Education and Training Vouchers Program; but the waiver shall only be to the extent that there is any tuition still payable after receipt of other financial aid received by the student.

(6) Any child enrolled in a regional school established pursuant to Part 10 of Article 16 of Chapter 115C of the General Statutes."

SECTION 4. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina, including the faculty of the North Carolina School of Science and Mathematics.

(8a) Employees of a regional school established pursuant to Part 10 of Article 16 of Chapter 115C.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(9a) Employees of the North Carolina Cooperative Extension Service of North Carolina State University who are employed in county operations and who are not exempt pursuant to subdivision (8) or (9) of this subsection.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) Repealed by Session Laws 2006-66, s. 9.11(z), effective July 1, 2007.

(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.

(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(20) Repealed by Session Laws 2008-134, s. 73(d), effective July 28, 2008.

(21) Employees of the Clean Water Management Trust Fund.

(22) Employees of the North Carolina Turnpike Authority.

(23) The Executive Administrator and the Deputy Executive Administrator of the State Health Plan for Teachers and State Employees.

(24) Employees of the State Health Plan for Teachers and State Employees as designated by law or by the Executive Administrator of the Plan.

(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.

(26) The Executive Director, associate and assistant directors, and instructional staff of the North Carolina Teacher Academy.

(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.

(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.

(29) The Executive Director, Deputy Director, all other directors, assistant and associate directors, and center fellows of the North Carolina Center for the Advancement of Teaching."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 125 Amendment No. 2 Withdrawn

COMMITTEE SUBSTITUTE X (to be filled in by Principal Clerk)

Rep.) Sen.) Stein

moves to amend the bill on page _____, lines 6-7

( ) WHICH CHANGES THE TITLE

by deleting the lines and substituting the following:

"The local board of education shall provide transportation to the regional school for students domiciled within the local school administrative unit." ~~and within ten (10) miles of the school.~~ This

and on page 7, line 15, by deleting the word "May" and substituting the word "shall".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 125 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.)
Sen.) Stein
Q, Linda

1 moves to amend the bill on page 7, line s 14-17
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the lines and substituting
4 the following:
5
6 "(a) Trasportation The participating units
7 shall develop a plan to provide
transportation to the student domiciled
9 in the district." ;
10
11 and on page 2, lines 6-7 by
12
13 deleting the lines and substiting the
14 following:
15 "The local board of education shall
16 develop a plan to provide trasportation
17 to the student domiciled in the
18 district." .
19

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 366

Short Title:	Manufactured Home Titling Changes.	(Public)
Sponsors:	Senators Goolsby, Newton, Daniel; Blake, Brown, Brunstetter, Davis, Forrester, Hunt, Rabon, and Tucker.	
Referred to:	Commerce.	

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CLARIFICATION FOR THE RETITLING OF A MANUFACTURED HOME THAT IS REMOVED FROM REAL PROPERTY AFTER THE ORIGINAL TITLE HAS BEEN CANCELLED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-109.2(d) reads as rewritten:

"(d) Application for Title After Cancellation. – If the owner of a manufactured home whose certificate of title has been cancelled under this section subsequently seeks to separate the manufactured home from the real property, the owner may apply for a new certificate of title. The owner must submit to the Division an affidavit containing the same information set out in subsection (b) of this section, verification that the manufactured home has been removed from the real property, verification of the identity of the current owner of the real property upon which the mobile home is located, and written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed. The Commissioner may require evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent. Upon receipt of this information, together with a title application and required fee, the Division ~~is authorized to issue a new title for the manufactured home.~~shall issue a new title for the manufactured home in the name of the current owner of the real property upon which the manufactured home is located."

SECTION 2. This act becomes effective August 1, 2011, and applies to titles issued on or after that date.

SENATE BILL 366:
Manufactured Home Titling Changes

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	April 26, 2011
Introduced by:	Sens. Goolsby, Newton, Daniel	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 366 would require verification of the owner of real property upon which a manufactured home is located for retitling of the manufactured home. The bill would also require the title to be issued in the name of the owner of the real property where the manufactured home is located.***

CURRENT LAW: An individual can surrender the title to a manufactured home if the manufactured home qualifies as real property. A manufactured home can qualify as real property under G.S. 105-273 if it meets all of the following requirements:

- It is a residential home.
- It has the moving hitch, wheels, and axels removed.
- It is placed upon a permanent foundation either on land owned by the owner of the manufactured home, or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years and the lease expressly provides for the disposition of the manufactured home upon termination of the lease.

To surrender the title, an owner must submit an affidavit that provides the following information:

- The manufacturer, model number, VIN number, and serial number of the manufactured home.
- A legal description of the real property where the home is placed and statement that the owner of the real property also owns the home or that the owner of the manufactured home has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed.
- A description of any security interests in the manufactured home.

After cancelling the title, the affidavit is returned to the owner of the manufactured home. The owner must then file the affidavit with the register of deeds where the real property is located. After the affidavit is filed, the manufactured home becomes an improvement to the real property.

The owner of a manufactured home that has cancelled the certificate of title may apply for a new title after the cancellation if the owner seeks to separate the manufactured home from the real property. The owner must submit the same information required in the affidavit above, as well as the following:

- Verification the manufactured home has been removed from the real property.
- Written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed.
- Evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent

BILL ANALYSIS: Senate Bill 366 would require additional information for the issuance of a new title for a manufactured home after the title has been cancelled. Along with the current information required by statute, an application for a new title must provide verification of the identity of the current owner of the real property upon which the manufactured home is located. The bill also requires the new title will be issued in the name of the current owner of the real property upon which the manufactured home is located.

EFFECTIVE DATE: This act is effective August 1, 2011 and applies to titles issued on or after that date.

S366-SMTD-31(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 405
PROPOSED COMMITTEE SUBSTITUTE S405-CSRC-15 [v.2]

4/25/2011 10:30:05 PM

Short Title: Amend Irrigation Contractors' Licensing Laws. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1 is amended by adding a new subdivision to read:

"**§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Irrigation Contractors' Licensing Board.

(1a) Business entity. – A person that is not an individual.

(1b) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(1d) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(1e) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(1f) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.

(3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.

(4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow

prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.

(4a) Nonresident individual. – An individual who is not a resident of this State.

(5) Person. – An individual, firm, partnership, association, corporation, or other legal entity."

SECTION 2. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions in this Chapter shall not apply to:

~~(1) Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.~~

(2) Any property owner who performs irrigation construction or irrigation contracting work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A general contractor licensed under Article 1 of Chapter 87 of the General ~~Statutes.~~Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform irrigation construction or irrigation contracting work. A public utilities contractor exempted by this subdivision may perform only the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or irrigation contracting work for a golf course.

(16) Any ~~person~~full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103."

SECTION 3. G.S. 89G-5(11) reads as rewritten:

"**§ 89G-5. Powers and duties.**

The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 4. Chapter 89G of the General Statutes is amended by adding the following new sections to read:

"**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

(a) The Board may issue a license in the name of a business entity if the business entity pays the license fee required by G.S. 89G-10 and one of the following applies:

(1) For a corporation, one or more officers or full-time employees empowered to act for the corporation are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(2) For a limited liability, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting..

(4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2) and (3) of subsection (a) of this section.

(c) The Board may issue a license in the name of a foreign entity if the following apply:

(1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (a)(1) of this section.

(2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes and complies with the requirements of subdivision (b)(1) of this section.

(3) For a foreign partnership, the partnership complies with the requirements of subdivision (c)(1) of this section.

(d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section.

(e) The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.

(f) An individual licensed under this Chapter may not execute a contract for irrigation construction or irrigation contracting on behalf of a business entity or a foreign entity unless the business entity or foreign entity is licensed under this section.

(g) All of the following shall apply if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity licensed under this section:

(1) The business entity or foreign entity shall provide written notice to the Board pursuant to rules adopted by the Board.

(2) The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under subdivision (1) of this subsection.

The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section.

"**§ 89G-6.2. Tax delinquency of nonresidents and foreign entities.**

(a) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual or foreign entity licensed by the Board. The information to be provided under this subsection shall be in a form required by the Secretary of Revenue.

(b) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue shall notify the Board of the delinquency. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement."

SECTION 5. G.S. 89G-9 reads as rewritten:

"**§ 89G-9. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice irrigation contracting or irrigation construction shall apply for license renewal and shall submit the required fees. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of irrigation construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require a licensee to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year. ~~Failure to obtain continuing education units shall result in the forfeiture of a license.~~

(c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 98G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, fails to request a reinstatement of the license, or fails to pay the reinstatement fee within the time provided shall result in the forfeiture of the

license. Upon forfeiture, ~~a person~~an individual shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 6. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license fee and individual license renewal fee	100.00
(3a)	Business entity or foreign entity license fee and business entity or foreign entity license renewal fee	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	~~Corporate license~~Reinstatement fee	~~100.00~~250.00
(7)	Duplicate license	25.00."

SECTION 7. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including attorneys' fees, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 8. The Revisor of Statutes shall change the phrase "irrigation construction or contracting" to "irrigation construction or irrigation contracting" wherever it appears in Chapter 89G of the General Statutes.

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

SENATE BILL 405:
Amend Irrigation Contractors' Licensing Laws

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 26, 2011
Introduced by:	Sens. Hartsell, Brown	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S405-CSRC-15		

SUMMARY: ***Senate Bill 405 creates a process by which the North Carolina Irrigation Contractors' Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. The bill also modifies the fee structure by adding a $250 reinstatement fee and allows the Board to assess the costs (including attorneys' fees) of a proceeding against an applicant or a licensee.***

The PCS differs from the original bill by adding a number of new definitions and by reorganizing the provisions related to issuing licenses for business entities, foreign entities and non-resident individuals. The PCS also revises the proposed fee changes.

CURRENT LAW: Chapter 89C of the General Statutes provides for the licensing and regulation of irrigation contractors. It prohibits any person from engaging in the practice of irrigation construction or contracting, using the designation "irrigation contractor," or advertising using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the North Carolina Irrigation Contractors' Licensing Board ("Board").

The following persons or entities are exempt from the licensing requirements:

- Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.
- Any property owner who performs irrigation construction or contracting work on his or her own property.
- Any person performing irrigation construction or contracting work:
    - For temporary irrigation to establish vegetative cover for erosion control.
    - To control dust on commercial construction sites or mining operations.
    - For use in agricultural production, farming, or ranching, including land application of animal wastewater.
    - For use in commercial sod production.
    - For use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- Any person performing irrigation construction or contracting work for a golf course.
- Any person maintaining or repairing an irrigation system installed prior to January 1, 2009 and owned by the homeowners association of a planned community and located within the planned community's common elements.
- Irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than $2,500.

The Board has the authority to examine and determine the qualifications and fitness of applicants for licensure and to take disciplinary action for violations of the law. In addition to taking any actions permitted under this act, the Board may assess a civil penalty not to exceed $2,000 for each violation. The Board must establish a schedule of civil penalties for violations of this act and rules adopted by the Board. The Board is also authorized to adopt and publish a code of professional conduct and practice for all licensees.

An applicant for licensure must meet all of the following qualifications:

- Must be at least 18 years of age.
- Must be of good moral character as determined by the Board.
- Must have at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in irrigation construction or contracting are equivalent to one year of experience.
- Must file and maintain with the Board a $10,000 corporate surety bond or irrevocable letter of credit.
- Must pass an examination administered by the Board, which at a minimum must test the applicant's understanding of proper methods of irrigation construction and installation, efficiency of water use and conservation in the practice of irrigation construction and contracting, and basic business skills.

Annual license renewal is on or before December 31 of each year. As a condition of license renewal, each licensee must complete 10 continuing education units per year. Failure to obtain continuing education units will result in forfeiture of the license.

BILL ANALYSIS:

Section 1 adds a number of new definitions to G.S. 89G-1 related to domestic and foreign legal entities that are not individuals.

Section 2 removes the licensure exemption for any federal, State or political subdivision performing irritation construction or contracting on public property. These instances are already covered by the exemption for a property owner performing work on the owner's property. The bill also clarifies the exemption for general contractors and public utilities contractors licensed under Article 1 of Chapter 87.

Section 3 makes a conforming change to the powers and duties of the Board. The requirement that an applicant file a bond or letter of credit with the Board already exists in G.S. 89G-6(a).

Section 4 creates two new sections. **G.S. 89G-6.1** specifies the requirements for issuing a license in the name of a business entity that is a corporation, a limited liability company, a partnership or a business entity doing business under an assumed or trade name. Generally speaking, the Board may issue a license in the name of one of these business entities provided the business entity pays the license fee, has one or more licensed individuals associated with the entity and only those licensed individuals execute contracts for irrigation construction or irrigation contracting on behalf of the business entity. The individual licensee must directly supervise the contract and may not execute a contract on behalf of a business entity that is not licensed by the Board. The Board may issue a license to an individual who is not a resident of this State if the individual otherwise meets the licensing requirements of the Chapter, and that individual may qualify as the individual licensee required for a business entity to be licensed. Finally, the Board may issue a license in the name of a foreign corporation or foreign limited liability company provided the foreign entity is properly registered with the Secretary of State and otherwise meets the licensure qualifications for a domestic business entity. Similar provisions apply to licensing

foreign partnerships. If the licensed individual ceases to be associated with the business entity, the business entity must notify the Board in writing and has 90 days from the date of notification to obtain another individual licensee. The Board must suspend the license of the business entity if it does not comply with these requirements.

G.S. 89G-6.2 requires the Board provide the Secretary of Revenue with information related to nonresident individuals and foreign entities licensed by the Board. If the Secretary notifies the Board that a nonresident individual or a foreign entity owes a delinquent income tax debt, the Board shall not renew that person's license unless the Secretary notifies the Board that the debt is paid or is being paid under an installment agreement.

Section 5 allows a 60-day grace period during which a licensed individual may obtain the required continuing education credits without forfeiture of the license.

Section 6 creates a $250 reinstatement fee.

Section 7 allows the Board to assess the costs, including attorneys' fee, of a proceeding against an applicant or a licensee.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

S405-SMRC-20(CSRC-15) v1

SENATE BILL 709

Short Title:	Energy Jobs Act.	(Public)
Sponsors:	Senators Rucho, Brown, Tucker; Allran, Brock, Gunn, Rouzer, and Soucek.	
Referred to:	Commerce.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE ENERGY PRODUCTION IN NORTH CAROLINA TO DEVELOP A SECURE, STABLE, AND PREDICTABLE ENERGY SUPPLY TO FACILITATE ECONOMIC GROWTH, JOB CREATION, AND EXPANSION OF BUSINESS AND INDUSTRY OPPORTUNITIES AND TO ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE.

Whereas, in April 2011, the President of the United States linked economic growth to energy independence and stated that the nation must increase its domestic energy production and efficiency while concurrently decreasing energy imports; and

Whereas, the United States government forecasts rising natural gas consumption, including a 40% increase in the use of natural gas for electric power generation; and

Whereas, North Carolina has had active offshore leases with estimated economically recoverable natural gas of approximately five trillion cubic feet specific to two individual lease blocks, each with an area of approximately nine square nautical miles; and

Whereas, North Carolina's 60 million acres of federal offshore waters is the largest along the Atlantic and the fourth largest in the United States; and

Whereas, the General Assembly authorized the creation of the Legislative Research Commission's Advisory Committee on Offshore Energy Exploration in 2008 to study offshore hydrocarbon and other energy resources; and

Whereas, the Legislative Research Commission's Advisory Committee on Offshore Energy Exploration heard testimony and received a report from the University of North Carolina Wind Study Group that found a yet to be quantified potential for utility-scale production of wind energy off the coast of North Carolina and possibly within eastern Pamlico Sound; and

Whereas, both State and federal agencies indicate a yet to be quantified potential for onshore energy resources in the State that include shale gas, nonedible biofuels crops in the agricultural and forestry industries, wind, and other alternative energy sources; and

Whereas, the findings in the April 2010 final report of the Legislative Research Commission's Advisory Committee on Offshore Energy Exploration noted that potentially significant energy resources exist offshore North Carolina that included quantifiable estimates from the federal government of almost 30 trillion cubic feet of natural gas in offshore North Carolina and adjacent mid-Atlantic states; and

Whereas, the Legislative Research Commission's Advisory Committee on Offshore Energy Exploration heard comments and received a report from the Southeast Energy Alliance that found production of natural gas and associated hydrocarbons offshore North Carolina

would create more than 6,700 new job and add more than $659 million annually to the State's Gross Domestic Product over three decades, during which time this energy production could generate almost $10 billion in cost sharing of government revenues at an average of $484 million per year to the State; and

Whereas, the Legislative Research Commission's Advisory Committee on Offshore Energy Exploration recommended that production of fossil fuel and alternative energy resources in the North Carolina's outer continental shelf should include provisions for revenue and royalty sharing directed to the State of North Carolina; and

Whereas, the Legislative Research Commission's Advisory Committee on Offshore Energy Exploration recommended that North Carolina participate cooperatively in regional offshore energy endeavors with Virginia and South Carolina; and

Whereas, the General Assembly of South Carolina authorized an offshore energy study with findings in the final report, completed in 2009, recommending that the state of South Carolina should consider the development of an offshore natural gas industry with appropriate federal revenue sharing; and

Whereas, the General Assembly of the Commonwealth of Virginia authorized an offshore energy study of natural gas potential with findings in the final report, completed in 2006, recommending exploration and development of natural gas resources offshore Virginia as well as federal revenue sharing of these resources; and

Whereas, during the past few years, the Governor of Virginia, the General Assembly of the Commonwealth of Virginia, and the United States Congressional delegation for Virginia continue to proactively support, put forth legislation in both the Commonwealth and in the United States Congress, and ratify legislation in the Commonwealth to move forward with energy exploration, development, and production as well as ensuring federal revenue sharing of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Royalties and Revenue From Offshore and Onshore Energy Production. – Any revenues and royalties paid to the State as a result of offshore or onshore leasing, exploration, development, and production of all energy resources shall be appropriated and used for the following purposes:

(1) Twenty-five percent (25%) of such revenues and royalties shall be credited to the General Fund.

(2) Twenty percent (20%) of such revenues and royalties shall be credited to the Highway Trust Fund established under G.S. 136-176.

(3) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina to establish and manage research and development fund for programs directly related to energy research and development.

(5) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for coastal conservation, including, but not limited to, beach and inlet management projects, channel navigation and maintenance, public beach and water access, water quality management, as well as fisheries and shellfish restoration.

(6) Five percent (5%) of such revenues and royalties shall be transferred to the State Port Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) Five percent (5%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State.

SECTION 2.(a) Governors' Regional Interstate Offshore Energy Policy Compact. – The Governor shall enter into a regional compact with the governors of South Carolina and Virginia to develop and implement a strategy to increase exploration and production of domestic offshore energy resources within this three-state region. Under this compact, the Governor shall work directly with the states' Congressional delegations, the United States Department of the Interior, the United States Department of Energy, the United States Environmental Protection Agency, and other appropriate federal agencies to develop strategies for increasing domestic energy supply and production within each state in the three-state region and their adjacent federal waters. The compact shall include provisions to address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

SECTION 2.(b) No later than December 1, 2011, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section.

SECTION 3. Onshore Shale Gas. – The Department of Environment and Natural Resources shall, in conjunction with the Energy Jobs Council, created in G.S. 113B-2, as amended by Section 4 of this act, provide a comprehensive report to the Governor, the General Assembly, and the Joint Regulatory Reform Committee by May 1, 2012, that outlines the commercial potential of onshore shale gas resources within the State as well as the regulatory framework necessary to develop this resource. As part of this report, the Department shall review all existing State laws and regulations regarding natural gas and related onshore hydrocarbon production specific to shale gas. The Department shall also review existing laws and regulations in states currently exploring for or producing shale gas, including Texas,

Pennsylvania, and Alabama, as well as related federal regulations and programs. In addition, the Department shall do all of the following for inclusion in its report under this section:

(1) Review State laws and regulations, including G.S. 113-393(d) and 15 NCAC 05D, and provide recommendations on amendments and additions to address issues related to shale gas exploration, development, and production, including horizontal drilling, well permitting, well spacing, maximum permitted well depth, reporting requirements, bonding requirements, fees, and penalties.

(2) Review State laws and regulations, including G.S. 87-88(c) and 15A NCAC 02C, and provide recommendations on amendments and additions to address issues related to shale gas exploration, development, and production, including hydraulic fracturing, reporting requirements for fracturing fluids, environmental management of fracturing fluids, water use, and groundwater protection. In addition, provide recommendations on the reuse, recycling, and disposal requirements for waste hydraulic fluids, water, and related solid waste and recommend well drilling, casing, and cementing standards for wells that may be subject to hydraulic fracturing.

(3) Provide an inventory of all water supplies and evaluate the availability of water supply and potential impacts on other water users in any area of shale gas interest identified by either the State Geologist or the United States Geological Survey.

(4) Develop a regulatory framework proposal, including agencies, staffing, processes, permit requirements, penalties, fees, and reporting requirements necessary to evaluate the technical and public safety merits of shale gas exploration and energy production and, where appropriate, outline processes for the provision of permit oversight, approval, and management.

SECTION 4.(a) Amend Energy Policy Act. – The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 4.(b) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

(3) It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public

health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource ~~planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North Carolina.~~planning, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 4.(c) G.S. 113B-2 reads as rewritten:

"§ 113B-2. Creation of Energy Policy Council; purpose of Council.

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of Commerce.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of Commerce.

(c) The Energy ~~Policy~~ Jobs Council and the State Energy Office shall serve as the central energy policy planning ~~body~~ bodies of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 4.(d) G.S. 113B-3 reads as rewritten:

"§ 113B-3. Composition of Council; appointments; terms of members; qualifications.

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 9 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Commerce.

(3) ~~Twelve~~ Eight public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~October 1, 2011, and ~~each such appointee shall serve until January 31, 2011. Thereafter,~~ the appointed members ~~of the General Assembly~~ shall serve ~~two year terms, and the appointed public members shall serve four year~~ four-year terms. ~~A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following~~ ~~qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be ~~experienced in the natural gas industry;~~experienced in offshore natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist, to be appointed by the President Pro Tempore.

(5) One member shall be ~~experienced in environmental protection;~~a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, to be appointed by the Speaker of the House of Representatives.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

~~(10) One member shall be knowledgeable in the finance, business development, or technology development of energy related business;~~

~~(11) One member shall be experienced in low income energy policy matters or low income residential weatherization.~~

~~(12) One member shall be experienced in the petroleum industry.~~"

SECTION 4.(e) G.S. 113B-4 reads as rewritten:

"**§ 113B-4. Chairman of Council; replacement; reimbursement of members.**

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a~~The Secretary of Commerce shall serve as chair of the Council.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

SECTION 4.(f) G.S. 113B-6 reads as rewritten:

"**§ 113B-6. General duties and responsibilities.**

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of

life. The Energy ~~Policy~~Jobs Council shall share its duties where appropriate with the State Energy Office. To achieve the goal of the Energy Jobs Council, the Secretary of Commerce has the discretion to delegate duties to either the Energy Jobs Council or the State Energy Office as appropriate, and, in addition, the Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of ~~energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy economy;~~domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable."

SECTION 4.(g) G.S. 113B-7 reads as rewritten:

"**§ 113B-7. Energy Efficiency Program; components.**

(a) The ~~Energy Policy Council~~State Energy Office shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the ~~Energy Policy Council~~State Energy Office considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the ~~Council~~ State Energy Office shall arrange for its distribution to interested parties and shall make the program available to the public and the ~~Council~~ State Energy Office further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the ~~Council~~ State Energy Office shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the ~~Energy Policy Council~~State Energy Office shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 4.(h) G.S. 113B-8 reads as rewritten:

"**§ 113B-8. Energy Management Plan; components.**

(a) The ~~Energy Policy Council~~State Energy Office shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976.

(b) The Energy Management Plan shall be designed to encourage the most efficient use of all sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable or uneconomical sources of energy.

(c) The Energy Management Plan shall include but not be limited to the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply;

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption;

(3) An independent analysis, in five-, 10-and 20-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion;

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State;

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina;

(6) An assessment of the social, economic and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations;

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five-, 10-and 20-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) In addition to the above, the Energy Management Plan shall contain proposals for the implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the ~~Council~~ State Energy Office shall arrange for its distribution to interested parties and shall make such plan available to the public and the ~~Council~~ State Energy Office further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Management Plan, the ~~Council~~ State Energy Office and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(f) The ~~Council~~ State Energy Office shall update such plan upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(g) The Governor shall have the authority to accept, administer and enforce federal programs, program measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to management of energy resources.

(h) The Governor shall have the authority to accept, administer and enforce the delegation of authority delegated to the State by the Emergency Petroleum Allocation Act and the Emergency Energy Conservation Act of 1979 and any orders, rules, and regulations issued pursuant to those acts as well as any succeeding federal programs, program measures, laws, orders, or regulations relating to the allocation, conservation, consumption, management or rationing of energy resources."

SECTION 4.(i) G.S. 113B-9 reads as rewritten:

"**§ 113B-9. Emergency Energy Program; components.**

(a) The ~~Energy Policy Council~~State Energy Office shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) Within four months of July 1, 1975:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the ~~Energy Policy Council~~State Energy Office a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the ~~Energy Policy Council~~State Energy Office shall prepare and submit to the ~~Energy Policy Council~~State Energy Office an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The ~~Energy Policy Council~~State Energy Office shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the ~~Energy Policy Council~~State Energy Office in lieu of information required pursuant to subsection (b) of this section.

(d) The ~~Energy Policy Council~~State Energy Office shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The ~~Energy Policy Council~~State Energy Office shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the ~~Energy Policy Council~~State Energy Office shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the ~~Energy Policy Council,~~State Energy Office, upon independent analysis and study by the ~~Council,~~State Energy Office, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The ~~Energy Policy Council~~State Energy Office shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the ~~Council~~ State Energy Office shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the ~~Council~~ State Energy Office shall arrange for its

distribution to interested parties and shall make such plan available to the public and the ~~Council~~ State Energy Office further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the ~~Council~~ State Energy Office and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The ~~Council~~ State Energy Office shall update said program upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 4.(j) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) Beginning January 1, 1977, and every ~~year~~two years thereafter, the State Energy Office shall collaborate with the Energy ~~Policy~~ Jobs Council ~~shall~~ and transmit to the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the Utilities Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five-, 10- and 20-year forecast period which, in the judgment of the State Energy Office and the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;

(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;

(7) A summary of the ~~Council's~~ activities of the State Energy Office and the Council since ~~its inception,~~the last report, a description of major plans developed by the State Energy Office and the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 4.(k) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker,

as chairman, the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie."

SECTION 4.(l) G.S. 113B-23 reads as rewritten:

"§ 113B-23. Administration of plans and procedures.

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the ~~Energy Policy Council~~State Energy Office, in collaboration with the Energy Jobs Council, shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the State Energy Office in collaboration with the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the State Energy Office, the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 4.(m) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the State Energy Office, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 5.(a) Technical Conforming Statutory Changes. – The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

Energy ~~Policy~~ Jobs Council."

SECTION 5.(b) G.S. 113B-5 reads as rewritten:

"§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 5.(c) G.S. 113B-11 reads as rewritten:

"**§ 113B-11. Powers and authority.**

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) The Department of Commerce shall provide the staffing capability to the Energy ~~Policy~~ Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State energy policy."

SECTION 5.(d) G.S. 114-4.2D reads as rewritten:

"**§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council and Energy Efficiency Program of the Department of Commerce.**

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council and Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 5.(e) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 5.(f) G.S. 143-345.13 reads as rewritten:

"**§ 143-345.13. Reporting of stocks of coal and petroleum fuels.**

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the

time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 6.(a) Miscellaneous Provisions. – Notwithstanding G.S. 113B-3 or any other law to the contrary, the memberships of all members of the Energy Policy Council serving as of the effective date of this act shall be terminated on the effective date of this act.

SECTION 6.(b) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 6.(c) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation.

SECTION 6.(d) This act is effective when it becomes law.

SENATE BILL 709: Energy Jobs Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	April 26, 2011
Introduced by:	Sens. Rucho, Brown, Tucker	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 709 would provide for the appropriation for royalties and revenues from offshore and onshore energy production; direct the Governor to enter into a regional compact for offshore energy exploration; direct the Department of Environment and Natural Resources and the Energy Jobs Council to provide a report on the potential of onshore shale gas resources; amend the Energy Policy Act to reform the Energy Policy Council into the Energy Jobs Council and to change the membership, goals, and duties of the Council; and directs the Energy Jobs Council to delegate responsibilities to the State Energy Office.***

BILL ANALYSIS:

Section 1, Royalties and Revenues from Offshore and Onshore Energy Production: Provides that any revenues or royalties paid to the State from offshore or onshore leasing, exploration, development, and production of energy shall be used for the following purposes:

- 25% to the General Fund.
- 20% the Highway Trust Fund.
- 15% to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation related to energy exploration and development and related energy infrastructure. The funds may be used as financial assistance for students attending community college to receive vocational training through this curriculum.
- 15% to the Board of Governors of The University of North Carolina to establish and manage research and development fund for programs directly related to energy research and development.
- 15% to the Department of Environment and Natural Resources for coastal conservation, including, beach and inlet management projects, channel navigation and maintenance, public beach and water access, water quality management, as well as fisheries and shellfish restoration.
- 5% to the State Port Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.
- 5% to the Department of Commerce for recruitment of energy-related industries to the State.

Section 2, Governor's Regional Intestate Offshore Energy Policy Compact: Directs the Governor to enter into a regional compact with the governors of South Carolina and Virginia to develop and implement a strategy for exploration of offshore energy resources within the three state region. The Governor is directed to work with the states' Congressional delegations, the US Department of the Interior, the US Department of Energy, the US Environmental Protection Agency, and other appropriate agencies to develop strategies for increasing domestic energy supply. The compact must include provisions to address the following:

- Timely review and consideration of permits and proposals at both the state and federal level to identify and quantify natural gas and related hydrocarbon resources along the continental margin.
- Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.
- Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.
- Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

By December 1, 2011, and every 3 months thereafter, the Governor must report to the General Assembly on the progress of complying with this section.

Section 3, Onshore Shale Gas: Directs the Department of Natural Resources and the Energy Jobs Council (as created in Section 4 of the bill) to provide a comprehensive report to the Governor, the General Assembly, and the Joint Regulatory Reform Committee by May 1, 2012 that outlines the commercial potential of onshore shale gas resources within the State and the regulatory framework necessary to develop the resource.

Section 4, Amend Energy Policy Act: Amends the Energy Policy Act to retitle the Act the Energy Policy and Jobs Act.

The legislative findings and purpose of the Act are amended to include the following statements:

- It is in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.
- It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.
- It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.
- The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.
- It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability.

The Energy Policy Council is retitled the Energy Jobs Council. The purpose of the new council is to advise and make recommendations to increase domestic energy exploration, development, and production within the State and region to promote economic growth and jobs. The membership of the Council is amended to the following:

- The Secretary of Commerce, who shall serve as Chair.
- Appointed by the Governor:
    - A representative of an investor-owned electric public utility.
    - An individual experienced in offshore gas development and exploration.
- Appointed by the President Pro Tempore:
    - A representative of an investor-owned gas public utility.
    - An energy economist.
    - A geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition.
- Appointed by the Speaker of the House:
    - An industrial energy consumer.
    - An individual knowledgeable of alternative and renewable energy sources.
    - A member with experience in trucking, rail, or shipping transportation.

The term of terms of the current members of the Energy Policy Council will terminate on the effective date of this act. The new appointments will be made by October 1, 2011.

The goal of the Energy Jobs Council is to identify and utilize domestic energy sources to ensure a secure, stable and predictable energy supply. The duties of the Council are amended to include the following:

- To develop and recommend a comprehensive State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of domestic energy resources.
- To facilitate the expansion of the domestic energy supply.
- To actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

The Energy Policy Council is directed to delegate duties to the State Energy Office. The bill directs the State Energy Office to participate in the Energy Efficiency Program, the Energy Management Plan, Emergency Energy Program, the annual report on energy conditions in the State, and provide energy coordination for the State during an energy crisis.

Sections 5 and 6: Makes technical and conforming changes to the General Statutes.

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

PAGES ATTENDING

Sen Brown, Chrm

COMMITTEE: Commerce **ROOM:** 1027B

DATE: 4-26 **TIME:** 11 AM

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

	Page Name	Hometown	Sponsoring Senator
	Zachary Johnson	Siler City	Atwater
2	Blake Scruggs	Chapel Hill	Atwater
3	Drew Connery	Charlotte	Rucho
4	Marques McPhail	Goldsboro	Pate
5	Joseph Clay	Ellenboro	Sen. Clary
6	Bailey Sherrill	Hiddenite	Soucek
7			
8			
9			

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2011

Name of Committee — **Date**

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Ashley Carr	Plato's Closet - Wilm., NC
Victoria N Cook	Once Upon A Child > Wilmington NC Plato's Closet
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Senate Commerce Committee — **Name of Committee**

April 26, 2011 — **Date**

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Dean Mathias	Play It Again Sports - Ral, Fay, Wilm. Durham Gboro Gvll
Dawn Reed	Music - Go - Round, Gboro NC
Scott Cline	Plato's Closet Durham, NC
Margaret Hostzell	Environment North Carolina
Kris Coracini	EDF
Jillie Robinson	NC Sustainable Energy Assoc.
Brian O'Hara	NC Offshore Wind Coalition
Grady McCallie	NC Conservation Network
Jim Simons	NC DENR - Land Res
Debbie Watts	Plato's Closet Raleigh NC
M. Bailey	Electri Cities

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Senate Commerce Committee — April 26, 2011

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Tom Dodge	Public Staff, NCUC
Carolyn Yantorn	Once Upon A Child Cary, NC
MARY Housel	once upon a child /Plato's Closet CARY
NANCY FARMER	Once Upn A Child Plato's Closet.
DAVID FARMER	ONCE UPON A CHILD PLATO'S CLOSET
Becki Fadeen	NCASA
Thom Wm	Fidato W. Wood
Danny Bauvum	Weatherspoon
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NAME	FIRM OR AGENCY AND ADDRESS
Paul Fortuna	[illegible]

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April 26, 2011 — **Date**

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Terry Talbott	Plato's Closet, Once Upon A Child Clothes Mentor Wilmington, NC.
Sharon Talbott	" " " "
Trish dela Motte	once Upon a Child 421 N Berkeley Blvd Goldsboro NC 27534
Lloyd Lowe	" "
Michael Kemp	Play It Again Sports 2963 Battleground Ave Greensboro, NC 27408 127 Jonestown Rd Winston-Salem, NC 27104
Chad Guise	PLAY IT AGAIN SPORTS DURHAM, RALEIGH, FAYETTEVILLE GREENVILLE, WILMINGTON
Jay Douglass	Play It Again Sports 8332-205 Pineville-Matthews Rd Charlotte, NC 28226
Rob Hines	NC OPI 301 N. Wilmington St. Raleigh
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Senate Commerce Committee — April 26, 2011

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Mary Maclean Asbill	SELC
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Dan Taylor	NCBIO
Bill Sparrow Jr.	Carolina's Irrigation Assn
Dirk Carlton	LBT
Jane Beverly	LBT
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Eugene Vardaman	CJLW
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Senate Commerce Committee — April 26, 2011
Name of Committee — **Date**

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John Monaghan	Piedmont Natural Gas
[illegible signature]	MWC
[illegible signature]	Bone & Asso
[illegible signature]	[illegible]
Mike McLaughlin	Lieutenant Gov.'s Office
Mitch Leonard	SEANC
[illegible signature]	Biofuels Ctr of NC
[illegible signature]	Plasma NRG
Julie Holzkamm	OVAC Greenville

SENATE COMMERCE COMMITTEE
Thursday, April 28, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 28, 2011 in room 1027 of the Legislative Building. Zachary Johnson of Siler City, Heather Green of Rutherfordton, Joseph Clay of Ellenboro, and Drew Connery of Charlotte served as pages. Twenty-six members of the committee were present. Senator Brown presided as chair.

S.B. 144 – Cash Converters Must Keep Purchase Records

Senator Meredith was recognized to explain the bill. Senator Jackson moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS clarifies that a cash converter has a duty to not purchase property that is known to be stolen and also clarifies that criminal penalties apply if a cash converter fails to keep the required records. Senator Hise moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 405 – Amend Irrigation Contractors' Licensing Laws

Senator Hartsell was recognized to explain the PCS and Senator Meredith moved to adopt the PCS for discussion. The PCS creates a process by which the North Carolina Irrigation Contractors' Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. It also modifies the fee structure by adding a $250 reinstatement fee, allows the Board to assess the costs of a proceeding against an applicant or a licensee, adds a number of new definitions and reorganizes the provisions related to issuing licenses for entities. Senator McKissick moved for a favorable report. The motion carried. A copy of the PCS and the summary is attached.

S.B. 709 – Energy Jobs Act

Senator Rucho was recognized to explain the bill. Senator Meredith moved to adopt the PCS for discussion and the motion carried. The PCS would provide for the appropriation for royalties and revenues from offshore and onshore energy production; direct the Governor to develop a regional compact for offshore energy exploration; direct the Department of Environment and Natural Resources and the Energy Jobs Council to provide a report on the potential of onshore shale gas resources; amend the Energy Policy Act to reform the Energy Policy Council into the Energy Jobs Council and to change the membership, goals, and duties of the Council; and directs the Energy Jobs Council to delegate responsibilities to the State Energy Office. It clarifies that the Governor will develop an interstate compact for offshore energy and requires the Governor to report on the development of the compact no later than three months from the effective date of this act. The Governor is also directed to report her final

recommendations to the Joint Regulatory Reform Committee by May 1, 2012. It also requires the Secretary of State to provide certified copies of this act to the Governors of South Carolina and Virginia, and the legislative bodies of those states. Heather Fennell, a staff attorney with the Research Division, was recognized to explain the bill, section by section. Ivan Urlaub, NC Sustainable Energy Association's Executive Director, was recognized. He opposes the current version of the bill due to low number of jobs created for NC citizens and he asked for a more comprehensive bill. Margaret Hartsell, Environment NC, spoke in opposition stating that industry was pushing the bill which has no environmental safeguards and she expressed concern about the threat to the coastal tourism industry. Senator Berger offered an amendment to add two clean water environmentalists to the committee. Senator Rucho opposed the amendment. Senator Hunt offered perfecting language to Senator Berger who offered a second amendment for the addition of a single clean water expert to the committee. He moved for its passage and the motion carried. Due to time limits, the committee had to continue discussion of the bill at a future meeting.

The meeting adjourned at 11:56 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 28, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 144	Cash Converters Must Keep Purchase Records.	Senator Meredith
SB 405	Amend Irrigation Contractors' Licensing Laws.	Senator Hartsell Senator Brown
SB 709	Energy Jobs Act.	Senator Brown Senator Rucho Senator Tucker

Senator Harry Brown, Chair

Senate Commerce Committee
Thursday, April 28, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 144	Cash Converters Must Keep Purchase Records.	Sen. Meredith
SB 405	Amend Irrigation Contractors' Licensing Laws.	Sen. Hartsell
		Sen. Brown
SB 709	Energy Jobs Act.	Sen. Brown
		Sen. Rucho
		Sen. Tucker

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, April 28, 2011

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

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

S.B. **144** Cash Converters Must Keep Purchase Records.

Draft Number:	85191
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

S.B. **405** Amend Irrigation Contractors' Licensing Laws.

Draft Number:	15155
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

S144 – Sen. Meredith
S405 – Sen. Hartsell

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 144
PROPOSED COMMITTEE SUBSTITUTE S144-CSRC-12 [v.6]

Short Title: Cash Converters Must Keep Purchase Records. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CASH CONVERTER BUSINESSES TO KEEP RECORDS OF PURCHASES AND TO MAKE THOSE RECORDS AVAILABLE TO LOCAL LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Chapter 91A of the General Statutes reads as rewritten:

"**Pawnbrokers and Cash Converters Modernization ~~Act of 1989.~~Act.**"

SECTION 2. G.S. 91A-1 reads as rewritten:

"**§ 91A-1. Short title.**

This Chapter shall be known and may be cited as the Pawnbrokers and Cash Converters Modernization ~~Act of 1989.~~Act."

SECTION 3. G.S. 91A-2 reads as rewritten:

"**§ 91A-2. Purpose.**

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops and cash converters vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act ~~of 1989 to:~~to do all of the following:

(1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating ~~pawnbrokers;~~ pawnbrokers.

(1a) Ensure a sound system of acquiring and disposing of tangible personal property by and through cash converters and to prevent unlawful property transactions, particularly in stolen property, by requiring record keeping by cash converters.

(2) Provide for pawnbroker licensing fees and investigation fees of ~~licensees;~~licensees.

(3) Ensure financial responsibility to the State and the general ~~public;~~public.

(4) Ensure compliance with federal and State ~~laws; and~~laws.

(5) Assist local governments in the exercise of their police authority."

SECTION 4. G.S. 91A-3 reads as rewritten:

"**§ 91A-3. Definitions.**

~~As used in this Article, the following definitions shall apply:~~The following definitions apply in this Chapter:

(1) Cash. – Lawful currency of the United States.

(2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. Pawnbrokers.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under Article 25 of Chapter 66 of the General Statutes.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture and children's products provided the amount paid for the individual item purchased is less than fifty dollars ($50).

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, of sporting goods and sporting equipment provided the amount paid for the individual item purchased is less than fifty dollars ($50).

~~(1)~~(3) ~~"Pawn" or "Pawn transaction" means a~~ Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

~~(2)~~(4) ~~"Pawnbroker" means any~~ Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

~~(3)~~(5) ~~"Pawnshop" means the~~ Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.

~~(4)~~(6) ~~"Person" means any~~ Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.

~~(5)~~(7) ~~"Pledged goods" means tangible~~ Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

~~(6)~~(8) ~~"Purchase" means any~~ Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."

SECTION 5. The catch line of G.S. 91A-7 reads as rewritten:

"§ 91A-7. ~~**Record keeping requirements.**~~ **Record-keeping requirements for pawnbrokers.**"

SECTION 6. Chapter 91A of the General Statutes is amended by adding a new section to read:

"**§ 91A-7.1. Record-keeping requirements for cash converters.**

(a) Every cash converter shall keep consecutively numbered records of each cash purchase. The cash converter shall, at the time of making the purchase, enter upon each record all of the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.

(2) The name, residence address, phone number, and date of birth of the seller.
(3) The date of the purchase.
(4) The type of identification and the identification number accepted from the seller.
(5) A description of the seller, including approximate height, weight, sex, and race.
(6) The purchase price.
(7) The statement that 'THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL.'

(b) The seller shall sign the record and shall receive an exact copy of the record, which shall be signed or initialed by the cash converter or any employee of the cash converter. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the sheriff's designee or the chief of police or the chief's designee of the municipality in which the cash converter is located. These records may be electronically reported to the sheriff of the county or the chief of police of the municipality in which the cash converter is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. These records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours.

(c) This section does not apply to purchases directly from a manufacturer or wholesaler for a cash converter's inventory."

SECTION 7. G.S. 91A-10 reads as rewritten:

"**§ 91A-10. Prohibitions.**

(a) A pawnbroker shall not:

(1) Accept a pledge from a person under the age of 18 ~~years;~~years.
(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn ~~transaction;~~transaction.
(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this ~~Chapter;~~ Chapter.
(4) Fail to exercise reasonable care to protect pledged goods from loss or ~~damage;~~ damage.
(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to ~~G.S. 91A-7(b);~~ G.S. 91A-7(b).
(6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State ~~police;~~police.
(7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with G.S. 91A-7(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from ~~wholesalers;~~wholesalers.
(8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of ~~business; or~~ business.

(9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle.

(b) A cash converter shall not purchase from any person property which is known to the cash converter to be stolen, unless there is a written agreement with local or State police."

SECTION 8. G.S. 91A-11 reads as rewritten:

"**§ 91A-11. Penalties.**

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this Chapter, shall, on conviction thereof, be deemed guilty of a Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) shall not apply to violations of ~~G.S. 91A-10(6)~~ G.S. 91A-10(a)(6) or (b) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this Chapter, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn."

SECTION 9. G.S. 25-9-201(b) reads as rewritten:

"(b) Applicable consumer laws and other law. – A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash Converters Modernization Act ~~of 1989~~ (Chapter 91A of the General Statutes)."

SECTION 10. This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

SENATE BILL 144:
Cash Converters Must Keep Purchase Records

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 27, 2011
Introduced by:	Sen. Meredith	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S144-CSRC-12		

SUMMARY: ***SB144 would regulate businesses that purchase goods from individuals for cash ("cash converters") by amending the Pawnbrokers Modernization Act of 1989 to require that cash converters keep records of cash purchases for inspection by law enforcement. Failure to keep the required records would be a Class 2 misdemeanor. If a cash converter knowingly purchases stolen goods, he or she would be prosecuted under existing law related to receipt and possession of stolen goods. The act does not require cash converters to be licensed.***

The PCS clarifies that a cash converter has a duty to not purchase property that is known to be stolen and also clarifies that criminal penalties apply if a cash converter fails to keep the required records.

CURRENT LAW: Chapter 91A of the General Statutes provides that any business that conducts itself as a pawnbroker must be licensed by the municipality or county where the business is located. A pawnbroker is a person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders. Pawnbrokers must keep consecutively numbered records of each pawn transaction including: a description of the item being pawned; the name, address, telephone number and date of birth of the person pledging the pawned item; the date of the transaction; the type of identification provided by the person pledging the goods; a description of the pledger; the amount of money advanced; the date due and amount charged; all pawn charges including interest; and the agreed upon value of the pledged item. Among other things, a pawnbroker is prohibited from taking any item in pledge that the pawnbroker knows or has reason to know is stolen. Knowing violations of Chapter 91A are punishable as Class 2 misdemeanors, but receipt of stolen goods is punishable as a Class H felony under G.S. 14-71, G.S. 14-71.1 and G.S. 14-72(b) respectively (receipt and/or possession of stolen goods) provided the person receiving or possessing the goods knew or had reasonable grounds to believe the goods were stolen.

BILL ANALYSIS: SB144 would amend the Pawnbroker Modernization Act of 1989 to create a class of businesses known as "cash converters". A cash converter is defined as a person engaged in the business of purchasing goods from the public for cash and who is permanently located in a retail store that holds himself out to the public as engaging the cash converting business. The definition does not apply to:

1. Pawnbrokers
2. Persons who purchase goods directly from manufacturers or wholesalers
3. Precious metal dealers to the extent their transactions are regulated under Article 15 of Chapter 66 (Regulation of Precious Metal Businesses)
4. Purchases of individual items for less than $50 by persons primarily in the business of buying children's items from the public.
5. Purchases of individual items for less than $50 by persons primarily in the business of buying sporting goods and sporting equipment from the public.

A cash converter must keep consecutively numbered records of each cash purchase including: a description of the item purchased; the name, address, telephone number and date of birth of the seller; the date of the transaction; the type of identification provided by the seller; a description of the seller including height, weight, sex and race; the purchase price; and a statement signed by the seller that the item is not stolen, has no liens or encumbrances, and is the seller's to sell. The seller must receive an exact copy of the record, and the cash converter must keep the records available for inspection and pickup by local law enforcement during regular business hours. A cash converter is prohibited from purchasing property which the cash converter knows is stolen.

A violation of the record keeping requirements by a cash converter would be a Class 2 misdemeanor. Receiving or possession stolen goods would be punishable under G.S. 14-71, 14-71.1 and/or 14-72(b) as applicable.

SB144 does not require cash converters to be licensed by the city or county where the business is located.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

S144-SMRC-18(CSRC-12) v8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 405
PROPOSED COMMITTEE SUBSTITUTE S405-CSRC-15 [v.4]

4/27/2011 3:59:23 PM

Short Title: Amend Irrigation Contractors' Licensing Laws. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1 is amended by adding a new subdivision to read:

"**§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Irrigation Contractors' Licensing Board.

(1a) Business entity. – A person that is not an individual.

(1b) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(1d) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(1e) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(1f) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.

(3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.

(4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow

prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.

(4a) Nonresident individual. – An individual who is not a resident of this State.

(5) Person. – An individual, firm, partnership, association, corporation, or other legal entity."

SECTION 2. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions in this Chapter shall not apply to:

~~(1)~~ Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public ~~property.~~ property and using its own employees.

(2) Any property owner who performs irrigation construction or irrigation contracting work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A general contractor licensed under Article 1 of Chapter 87 of the General ~~Statutes.~~Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform irrigation construction or irrigation contracting work. A public utilities contractor exempted by this subdivision may perform only the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or irrigation contracting work for a golf course.

(16) Any ~~person~~full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103."

SECTION 3. G.S. 89G-5(11) reads as rewritten:

"**§ 89G-5. Powers and duties.**

The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 4. Chapter 89G of the General Statutes is amended by adding the following new sections to read:

"**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

(a) The Board may issue a license in the name of a business entity if the business entity pays the license fee required by G.S. 89G-10 and one of the following applies:

(1) For a corporation, one or more officers or full-time employees empowered to act for the corporation are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(2) For a limited liability, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting..

(4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2) and (3) of subsection (a) of this section.

(c) The Board may issue a license in the name of a foreign entity if the following apply:

(1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (a)(1) of this section.

(2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes and complies with the requirements of subdivision (b)(1) of this section.

(3) For a foreign partnership, the partnership complies with the requirements of subdivision (c)(1) of this section.

(d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section.

(e) The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.

(f) An individual licensed under this Chapter may not execute a contract for irrigation construction or irrigation contracting on behalf of a business entity or a foreign entity unless the business entity or foreign entity is licensed under this section.

(g) All of the following shall apply if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity licensed under this section:

(1) The business entity or foreign entity shall provide written notice to the Board pursuant to rules adopted by the Board.

(2) The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under subdivision (1) of this subsection.

The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section.

"**§ 89G-6.2. Tax delinquency of nonresidents and foreign entities.**

(a) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual or foreign entity licensed by the Board. The information to be provided under this subsection shall be in a form required by the Secretary of Revenue.

(b) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue shall notify the Board of the delinquency. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement."

SECTION 5. G.S. 89G-9 reads as rewritten:

"**§ 89G-9. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice irrigation contracting or irrigation construction shall apply for license renewal and shall submit the required fees. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of irrigation construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require a licensee to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year. ~~Failure to obtain continuing education units shall result in the forfeiture of a license.~~

(c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 98G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, to request a reinstatement of the license, or to pay the reinstatement fee within the time provided shall result in the forfeiture of the license. Upon

forfeiture, ~~a person~~an individual shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 6. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license fee and individual license renewal fee	100.00
(3a)	Business entity or foreign entity license fee and business entity or foreign entity license renewal fee	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	~~Corporate license~~Reinstatement fee	~~100.00~~250.00
(7)	Duplicate license	25.00."

SECTION 7. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including attorneys' fees, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 8. The Revisor of Statutes shall change the phrase "irrigation construction or contracting" to "irrigation construction or irrigation contracting" wherever it appears in Chapter 89G of the General Statutes.

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

SENATE BILL 405:
Amend Irrigation Contractors' Licensing Laws

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 26, 2011
Introduced by:	Sens. Hartsell, Brown	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S405-CSRC-15		

SUMMARY: ***Senate Bill 405 creates a process by which the North Carolina Irrigation Contractors' Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. The bill also modifies the fee structure by adding a $250 reinstatement fee and allows the Board to assess the costs (including attorneys' fees) of a proceeding against an applicant or a licensee.***

The PCS differs from the original bill by adding a number of new definitions and by reorganizing the provisions related to issuing licenses for business entities, foreign entities and non-resident individuals. The PCS also revises the proposed fee changes.

CURRENT LAW: Chapter 89C of the General Statutes provides for the licensing and regulation of irrigation contractors. It prohibits any person from engaging in the practice of irrigation construction or contracting, using the designation "irrigation contractor," or advertising using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the North Carolina Irrigation Contractors' Licensing Board ("Board").

The following persons or entities are exempt from the licensing requirements:

- Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.
- Any property owner who performs irrigation construction or contracting work on his or her own property.
- Any person performing irrigation construction or contracting work:
    - For temporary irrigation to establish vegetative cover for erosion control.
    - To control dust on commercial construction sites or mining operations.
    - For use in agricultural production, farming, or ranching, including land application of animal wastewater.
    - For use in commercial sod production.
    - For use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- Any person performing irrigation construction or contracting work for a golf course.
- Any person maintaining or repairing an irrigation system installed prior to January 1, 2009 and owned by the homeowners association of a planned community and located within the planned community's common elements.
- Irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than $2,500.

The Board has the authority to examine and determine the qualifications and fitness of applicants for licensure and to take disciplinary action for violations of the law. In addition to taking any actions permitted under this act, the Board may assess a civil penalty not to exceed $2,000 for each violation. The Board must establish a schedule of civil penalties for violations of this act and rules adopted by the Board. The Board is also authorized to adopt and publish a code of professional conduct and practice for all licensees.

An applicant for licensure must meet all of the following qualifications:

- Must be at least 18 years of age.
- Must be of good moral character as determined by the Board.
- Must have at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in irrigation construction or contracting are equivalent to one year of experience.
- Must file and maintain with the Board a $10,000 corporate surety bond or irrevocable letter of credit.
- Must pass an examination administered by the Board, which at a minimum must test the applicant's understanding of proper methods of irrigation construction and installation, efficiency of water use and conservation in the practice of irrigation construction and contracting, and basic business skills.

Annual license renewal is on or before December 31 of each year. As a condition of license renewal, each licensee must complete 10 continuing education units per year. Failure to obtain continuing education units will result in forfeiture of the license.

BILL ANALYSIS:

Section 1 adds a number of new definitions to G.S. 89G-1 related to domestic and foreign legal entities that are not individuals.

Section 2 clarifies that the licensure exemption for any federal, State or political subdivision performing irritation construction or contracting on public property only applies if the work is done by employees of those entities. The bill also clarifies the exemption for general contractors and public utilities contractors licensed under Article 1 of Chapter 87.

Section 3 makes a conforming change to the powers and duties of the Board. The requirement that an applicant file a bond or letter of credit with the Board already exists in G.S. 89G-6(a).

Section 4 creates two new sections. **G.S. 89G-6.1** specifies the requirements for issuing a license in the name of a business entity that is a corporation, a limited liability company, a partnership or a business entity doing business under an assumed or trade name. Generally speaking, the Board may issue a license in the name of one of these business entities provided the business entity pays the license fee, has one or more licensed individuals associated with the entity and only those licensed individuals execute contracts for irrigation construction or irrigation contracting on behalf of the business entity. The individual licensee must directly supervise the contract and may not execute a contract on behalf of a business entity that is not licensed by the Board. The Board may issue a license to an individual who is not a resident of this State if the individual otherwise meets the licensing requirements of the Chapter, and that individual may qualify as the individual licensee required for a business entity to be licensed. Finally, the Board may issue a license in the name of a foreign corporation or foreign limited liability company provided the foreign entity is properly registered with the Secretary of State and otherwise meets the licensure qualifications for a domestic business entity. Similar provisions apply to licensing

foreign partnerships. If the licensed individual ceases to be associated with the business entity, the business entity must notify the Board in writing and has 90 days from the date of notification to obtain another individual licensee. The Board must suspend the license of the business entity if it does not comply with these requirements.

G.S. 89G-6.2 requires the Board provide the Secretary of Revenue with information related to nonresident individuals and foreign entities licensed by the Board. If the Secretary notifies the Board that a nonresident individual or a foreign entity owes a delinquent income tax debt, the Board shall not renew that person's license unless the Secretary notifies the Board that the debt is paid or is being paid under an installment agreement.

Section 5 allows a 60-day grace period during which a licensed individual may obtain the required continuing education credits without forfeiture of the license.

Section 6 creates a $250 reinstatement fee.

Section 7 allows the Board to assess the costs, including attorneys' fee, of a proceeding against an applicant or a licensee.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

S405-SMRC-20(CSRC-15) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 709
PROPOSED COMMITTEE SUBSTITUTE S709-CSTD-22 [v.3]

4/27/2011 5:36:12 PM

Short Title: Energy Jobs Act. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE ENERGY PRODUCTION IN NORTH CAROLINA TO DEVELOP A SECURE, STABLE, AND PREDICTABLE ENERGY SUPPLY TO FACILITATE ECONOMIC GROWTH, JOB CREATION, AND EXPANSION OF BUSINESS AND INDUSTRY OPPORTUNITIES AND TO ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE.

Whereas, in April 2011, the President of the United States linked economic growth to energy independence and stated that the nation must increase its domestic energy production and efficiency while concurrently decreasing energy imports; and

Whereas, the United States government forecasts rising natural gas consumption, including a 40% increase in the use of natural gas for electric power generation; and

Whereas, North Carolina has had active offshore leases with estimated economically recoverable natural gas of approximately five trillion cubic feet specific to two individual lease blocks, each with an area of approximately nine square nautical miles; and

Whereas, North Carolina's 60 million acres of federal offshore waters is the largest along the Atlantic and the fourth largest in the United States; and

Whereas, the General Assembly authorized the creation of the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration in 2008 to study offshore hydrocarbon and other energy resources; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration heard testimony and received a report from the University of North Carolina Wind Study Group that found a yet to be quantified potential for utility-scale production of wind energy off the coast of North Carolina and possibly within eastern Pamlico Sound; and

Whereas, both State and federal agencies indicate a yet to be quantified potential for onshore energy resources in the State that include shale gas, nonedible biofuels crops in the agricultural and forestry industries, wind, and other alternative energy sources; and

Whereas, the findings in the April 2010 final report of the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration noted that potentially significant energy resources exist offshore North Carolina that included quantifiable estimates from the federal government of almost 30 trillion cubic feet of natural gas in offshore North Carolina and adjacent mid-Atlantic states; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration heard comments and received a report from the Southeast Energy Alliance that found production of natural gas and associated hydrocarbons offshore North Carolina would create more than 6,700 new job and add more than $659 million annually to the State's Gross Domestic Product over three decades, during which time this energy production could generate almost $10 billion in cost sharing of government revenues at an average of $484 million per year to the State; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration recommended that production of fossil fuel and alternative energy resources in the North Carolina's outer continental shelf should include provisions for revenue and royalty sharing directed to the State of North Carolina; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration recommended that North Carolina participate cooperatively in regional offshore energy endeavors with Virginia and South Carolina; and

Whereas, the General Assembly of South Carolina authorized an offshore energy study with findings in the final report, completed in 2009, recommending that the state of South Carolina should consider the development of an offshore natural gas industry with appropriate federal revenue sharing; and

Whereas, the General Assembly of the Commonwealth of Virginia authorized an offshore energy study of natural gas potential with findings in the final report, completed in 2006, recommending exploration and development of natural gas resources offshore Virginia as well as federal revenue sharing of these resources; and

Whereas, during the past few years, the Governor of Virginia, the General Assembly of the Commonwealth of Virginia, and the United States Congressional delegation for Virginia continue to proactively support, put forth legislation in both the Commonwealth and in the United States Congress, and ratify legislation in the Commonwealth to move forward with energy exploration, development, and production as well as ensuring federal revenue sharing of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Royalties and Revenue From Offshore and Onshore Energy Production. – Any revenues and royalties paid to the State as a result of offshore or onshore leasing, exploration, development, and production of all energy resources shall be appropriated and used for the following purposes:

(1) Twenty-five percent (25%) of such revenues and royalties shall be credited to the General Fund.

(2) Twenty percent (20%) of such revenues and royalties shall be credited to the Highway Trust Fund established under G.S. 136-176.

(3) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina to establish and manage research and development fund for programs directly related to energy research and development.

(5) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for coastal conservation, including, but not limited to, beach and inlet management projects, channel navigation and maintenance, public beach and water

access, water quality management, as well as fisheries and shellfish restoration.

(6) Five percent (5%) of such revenues and royalties shall be transferred to the State Ports Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) Five percent (5%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State.

SECTION 2.(a) Development of Governors' Regional Interstate Offshore Energy Policy Compact. – The Governor is directed to commence development of a regional energy compact with the governors of South Carolina and Virginia in order to develop a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor is authorized to work directly with each of the three states' Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and productions within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

SECTION 2.(b) No later than three months after the effective date of this act, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report her final recommendations

for the three-state energy compact to the Joint Regulatory Reform Committee no later than May 1, 2012.

SECTION 3. Onshore Shale Gas. – The Department of Environment and Natural Resources shall, in conjunction with the Energy Jobs Council, created in G.S. 113B-2, as amended by Section 4 of this act, provide a comprehensive report to the Governor, the General Assembly, and the Joint Regulatory Reform Committee by May 1, 2012, that outlines the commercial potential of onshore shale gas resources within the State as well as the regulatory framework necessary to develop this resource. As part of this report, the Department shall review all existing State laws and regulations regarding natural gas and related onshore hydrocarbon production specific to shale gas. The Department shall also review existing laws and regulations in states currently exploring for or producing shale gas, including Texas, Pennsylvania, and Alabama, as well as related federal regulations and programs. In addition, the Department shall do all of the following for inclusion in its report under this section:

(1) Review State laws and regulations, including G.S. 113-393(d) and 15 NCAC 05D, and provide recommendations on amendments and additions to address issues related to shale gas exploration, development, and production, including horizontal drilling, well permitting, well spacing, maximum permitted well depth, reporting requirements, bonding requirements, fees, and penalties.

(2) Review State laws and regulations, including G.S. 87-88(c) and 15A NCAC 02C, and provide recommendations on amendments and additions to address issues related to shale gas exploration, development, and production, including hydraulic fracturing, reporting requirements for fracturing fluids, environmental management of fracturing fluids, water use, and groundwater protection. In addition, provide recommendations on the reuse, recycling, and disposal requirements for waste hydraulic fluids, water, and related solid waste and recommend well drilling, casing, and cementing standards for wells that may be subject to hydraulic fracturing.

(3) Provide an inventory of all water supplies and evaluate the availability of water supply and potential impacts on other water users in any area of shale gas interest identified by either the State Geologist or the United States Geological Survey.

(4) Develop a regulatory framework proposal, including agencies, staffing, processes, permit requirements, penalties, fees, and reporting requirements necessary to evaluate the technical and public safety merits of shale gas exploration and energy production and, where appropriate, outline processes for the provision of permit oversight, approval, and management.

SECTION 4.(a) Amend Energy Policy Act. – The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 4.(b) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

(3) It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource ~~planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North Carolina.~~planning, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 4.(c) G.S. 113B-2 reads as rewritten:

"**§ 113B-2. Creation of Energy ~~Policy~~ Jobs Council; purpose of Council.**

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of Commerce.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of Commerce.

(c) The Energy ~~Policy~~ Jobs Council and the State Energy Office shall serve as the central energy policy planning ~~body~~ bodies of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 4.(d) G.S. 113B-3 reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 9 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Commerce.

(3) ~~Twelve~~ Eight public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~October 1, 2011, and ~~each such appointee shall serve until January 31, 2011. Thereafter,~~ the appointed members ~~of the General Assembly~~ shall serve ~~two-year terms, and the appointed public members shall serve four-year~~ four-year terms. ~~A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be ~~experienced in the natural gas industry;~~experienced in offshore natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist, to be appointed by the President Pro Tempore.

(5) One member shall be ~~experienced in environmental protection;~~a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, to be appointed by the Speaker of the House of Representatives.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

~~(10) One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;~~

~~(11) One member shall be experienced in low-income energy policy matters or low-income residential weatherization.~~

~~(12) One member shall be experienced in the petroleum industry.~~"

SECTION 4.(e) G.S. 113B-4 reads as rewritten:

"**§ 113B-4. Chairman of Council; replacement; reimbursement of members.**

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a~~The Secretary of Commerce shall serve as chair of the Council.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

SECTION 4.(f) G.S. 113B-6 reads as rewritten:

"§ 113B-6. General duties and responsibilities.

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy ~~Policy~~Jobs Council shall share its duties where appropriate with the State Energy Office. To achieve the goal of the Energy Jobs Council, the Secretary of Commerce has the discretion to delegate duties to either the Energy Jobs Council or the State Energy Office as appropriate, and, in addition, the Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of ~~energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy economy;~~domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable."

SECTION 4.(g) G.S. 113B-7 reads as rewritten:

"§ 113B-7. Energy Efficiency Program; components.

(a) The ~~Energy Policy Council~~State Energy Office shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the ~~Energy Policy Council~~State Energy Office considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the ~~Council~~ State Energy Office shall arrange for its distribution to interested parties and shall make the program available to the public and the ~~Council~~ State Energy Office further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the ~~Council~~ State Energy Office shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the ~~Energy Policy Council~~State Energy Office shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 4.(h) G.S. 113B-8 reads as rewritten:

"**§ 113B-8. Energy Management Plan; components.**

(a) The ~~Energy Policy Council~~State Energy Office shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976.

(b) The Energy Management Plan shall be designed to encourage the most efficient use of all sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable or uneconomical sources of energy.

(c) The Energy Management Plan shall include but not be limited to the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply;

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption;

(3) An independent analysis, in five-, 10-and 20-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion;

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State;

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina;

(6) An assessment of the social, economic and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations;

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five-, 10-and 20-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) In addition to the above, the Energy Management Plan shall contain proposals for the implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the ~~Council~~ State Energy Office shall arrange for its distribution to interested parties and shall make such plan available to the public and the ~~Council~~ State Energy Office further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Management Plan, the ~~Council~~ State Energy Office and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(f) The ~~Council~~ State Energy Office shall update such plan upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(g) The Governor shall have the authority to accept, administer and enforce federal programs, program measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to management of energy resources.

(h) The Governor shall have the authority to accept, administer and enforce the delegation of authority delegated to the State by the Emergency Petroleum Allocation Act and the Emergency Energy Conservation Act of 1979 and any orders, rules, and regulations issued pursuant to those acts as well as any succeeding federal programs, program measures, laws, orders, or regulations relating to the allocation, conservation, consumption, management or rationing of energy resources."

SECTION 4.(i) G.S. 113B-9 reads as rewritten:

"**§ 113B-9. Emergency Energy Program; components.**

(a) The ~~Energy Policy Council~~State Energy Office shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) Within four months of July 1, 1975:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the ~~Energy Policy Council~~State Energy Office a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the ~~Energy Policy Council~~State Energy Office shall prepare and submit to the ~~Energy Policy Council~~State Energy Office an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The ~~Energy Policy Council~~State Energy Office shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the ~~Energy Policy Council~~State Energy Office in lieu of information required pursuant to subsection (b) of this section.

(d) The ~~Energy Policy Council~~State Energy Office shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The ~~Energy Policy Council~~State Energy Office shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the ~~Energy Policy Council~~State Energy Office shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the ~~Energy Policy Council,~~State Energy Office, upon independent analysis and study by the ~~Council,~~State Energy Office, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The ~~Energy Policy Council~~State Energy Office shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the ~~Council~~ State Energy Office shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the ~~Council~~ State Energy Office shall arrange for its distribution to interested parties and shall make such plan available to the public and the ~~Council~~ State Energy Office further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the ~~Council~~ State Energy Office and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The ~~Council~~ State Energy Office shall update said program upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 4.(j) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) Beginning January 1, 1977, and every ~~year~~two years thereafter, the State Energy Office shall collaborate with the Energy ~~Policy~~ Jobs Council ~~shall~~ and transmit to the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the Utilities Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five-, 10- and 20-year forecast period which, in the judgment of the State Energy Office and the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;

(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;

(7) A summary of the ~~Council's~~ activities of the State Energy Office and the Council since ~~its inception,~~the last report, a description of major plans developed by the State Energy Office and the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 4.(k) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker, as chairman, the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie."

SECTION 4.(l) G.S. 113B-23 reads as rewritten:

"**§ 113B-23. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the ~~Energy Policy Council~~State Energy Office, in collaboration with the Energy Jobs Council, shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the State Energy Office in collaboration with the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the State Energy Office, the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 4.(m) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the State Energy Office, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County,

or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 5.(a) Technical Conforming Statutory Changes. – The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

Energy ~~Policy~~ Jobs Council."

SECTION 5.(b) G.S. 113B-5 reads as rewritten:

"**§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.**

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 5.(c) G.S. 113B-11 reads as rewritten:

"**§ 113B-11. Powers and authority.**

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) The Department of Commerce shall provide the staffing capability to the Energy ~~Policy~~ Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State energy policy."

SECTION 5.(d) G.S. 114-4.2D reads as rewritten:

"**§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council and Energy Efficiency Program of the Department of Commerce.**

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council and Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 5.(e) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 5.(f) G.S. 143-345.13 reads as rewritten:

"**§ 143-345.13. Reporting of stocks of coal and petroleum fuels.**

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North

Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 6.(a) Miscellaneous Provisions. – Notwithstanding G.S. 113B-3 or any other law to the contrary, the memberships of all members of the Energy Policy Council serving as of the effective date of this act shall be terminated on the effective date of this act.

SECTION 6.(b) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 6.(c) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation, the Governors of South Carolina and Virginia, and the legislative bodies of South Carolina and Virgina.

SECTION 6.(d) This act is effective when it becomes law.

SENATE BILL 709:
Energy Jobs Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2011
Introduced by:	Sens. Rucho, Brown, Tucker	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S709-CSTD-22		

SUMMARY: ***The PCS to Senate Bill 709 would provide for the appropriation for royalties and revenues from offshore and onshore energy production; direct the Governor to develop a regional compact for offshore energy exploration; direct the Department of Environment and Natural Resources and the Energy Jobs Council to provide a report on the potential of onshore shale gas resources; amend the Energy Policy Act to reform the Energy Policy Council into the Energy Jobs Council and to change the membership, goals, and duties of the Council; and directs the Energy Jobs Council to delegate responsibilities to the State Energy Office.*** ***The PCS makes the following changes to the bill:***

- ***Clarifies that the Governor will develop an interstate compact for offshore energy.***
- ***Requires the Governor to report on the development of the compact no later than three months from the effective date of this act. The Governor is also directed to report her final recommendations to the Joint Regulatory Reform Committee by May 1, 2012.***
- ***Requires the Secretary of State to provide certified copies of this act to the Governors of South Carolina and Virginia, and the legislative bodies of those states.***

BILL ANALYSIS:

Section 1, Royalties and Revenues from Offshore and Onshore Energy Production: Provides that any revenues or royalties paid to the State from offshore or onshore leasing, exploration, development, and production of energy shall be used for the following purposes:

- 25% to the General Fund.
- 20% the Highway Trust Fund.
- 15% to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation related to energy exploration and development and related energy infrastructure. The funds may be used as financial assistance for students attending community college to receive vocational training through this curriculum.
- 15% to the Board of Governors of The University of North Carolina to establish and manage research and development fund for programs directly related to energy research and development.
- 15% to the Department of Environment and Natural Resources for coastal conservation, including, beach and inlet management projects, channel navigation and maintenance, public beach and water access, water quality management, as well as fisheries and shellfish restoration.
- 5% to the State Port Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

- 5% to the Department of Commerce for recruitment of energy-related industries to the State.

Section 2, Governor's Regional Intestate Offshore Energy Policy Compact: Directs the Governor to develop a regional compact with the governors of South Carolina and Virginia to develop a regional strategy for exploration of offshore energy resources. The Governor is directed to work with the states' Congressional delegations, the US Department of the Interior, the US Department of Energy, the US Environmental Protection Agency, and other appropriate agencies to develop strategies for increasing domestic energy supply. The compact must include provisions to address the following:

- Timely review and consideration of permits and proposals at both the state and federal level to identify and quantify natural gas and related hydrocarbon resources along the continental margin.
- Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.
- Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.
- Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

By three months after the effective date of this act, and every 3 months thereafter, the Governor must report to the General Assembly on the progress of complying with this section. The Governor is also directed to report her final recommendations to the Joint Regulatory Reform Committee by May 1, 2012.

Section 3, Onshore Shale Gas: Directs the Department of Natural Resources and the Energy Jobs Council (as created in Section 4 of the bill) to provide a comprehensive report to the Governor, the General Assembly, and the Joint Regulatory Reform Committee by May 1, 2012 that outlines the commercial potential of onshore shale gas resources within the State and the regulatory framework necessary to develop the resource.

Section 4, Amend Energy Policy Act: Amends the Energy Policy Act to retitle the Act the Energy Policy and Jobs Act.

The legislative findings and purpose of the Act are amended to include the following statements:

- It is in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.
- It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

- It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.
- The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.
- It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability.

The Energy Policy Council is retitled the Energy Jobs Council. The purpose of the new council is to advise and make recommendations to increase domestic energy exploration, development, and production within the State and region to promote economic growth and jobs. The membership of the Council is amended to the following:

- The Secretary of Commerce, who shall serve as Chair.
- Appointed by the Governor:
    - A representative of an investor-owned electric public utility.
    - An individual experienced in offshore gas development and exploration.
- Appointed by the President Pro Tempore:
    - A representative of an investor-owned gas public utility.
    - An energy economist.
    - A geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition.
- Appointed by the Speaker of the House:
    - An industrial energy consumer.
    - An individual knowledgeable of alternative and renewable energy sources.
    - A member with experience in trucking, rail, or shipping transportation.

The term of terms of the current members of the Energy Policy Council will terminate on the effective date of this act. The new appointments will be made by October 1, 2011.

The goal of the Energy Jobs Council is to identify and utilize domestic energy sources to ensure a secure, stable and predictable energy supply. The duties of the Council are amended to include the following:

- To develop and recommend a comprehensive State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of domestic energy resources.
- To facilitate the expansion of the domestic energy supply.

- To actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

The Energy Policy Council is directed to delegate duties to the State Energy Office. The bill directs the State Energy Office to participate in the Energy Efficiency Program, the Energy Management Plan, Emergency Energy Program, the annual report on energy conditions in the State, and provide energy coordination for the State during an energy crisis.

Sections 5 and 6: Makes technical and conforming changes to the General Statutes.

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

S709-SMTD-34(CSTD-22) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 28, 2011

S. B. No. 709 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Berger

moves to amend the bill on page ~~2~~ 5, line 44

( ) WHICH CHANGES THE TITLE

by deleting the term "9" and substituting the term "12";

and on page 6, line 1, by deleting the term "Eight" and substituting the term "Eleven";

and on page 6, line 21, by ~~revising~~ inserting at the end of that line:

~~"(2a) Three members experienced in clean water protection to be appointed by the Governor."~~

"(2a) Three members who are active in a community based non-profit organization whose main goals are advocacy of the protection of clean water, to be appointed by the Governor.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 709 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

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~~"(2a) Three members appointed to clean water protection to be appointed by the Governor"~~

"(2a) Three members who are active in a community based non-profit organization whose main goals are advocacy of the protection of clean water, to be appointed by the Governor.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027

DATE: 4-28 **TIME:** 11 Am

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

	Page Name	Hometown	Sponsoring Senator
	Drew Comery	Charlotte	Rucho
2	Zac Johnson	Siler City	Atwater
3	Heather Green	Rutherfordton	Clary
4	Joseph Clay	Ellenboro	Senator Clary
5			
6			
7			
8			
9			

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2011

Name of Committee — **Date**

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Tom Dodge	Public Staff, NCUC
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Dan Kaylor	Kaylor Law Firm
Bruce Thompson	Parker Poe
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Senate Commerce Committee — April 28, 2011

Name of Committee — **Date**

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Rick Zechini	Progress Energy
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W. Gardner Culpepper	DLC + Assoc.
Will Culpepper	MVA
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Senate Commerce Committee
Name of Committee

April 28, 2011
Date

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Maggie Hostetter	Environment North Carolina
DAN CRAWFORD	NCLCV
BRIAN O'HARA	NC OFFSHORE WIND COALITION
SETH EFFRON	N.C. ENERGY OFFICE
	NCPBA
Bob Moulton	Pawnbroker
	PBWC
Sen Bill Rabon	NC Senate
	NEE
Jean Mahoney	NCSEA

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Senate Commerce Committee — April 28, 2011

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Elizabeth Hamm	NCPA
LuAnn Bynum	CSS
Jamie Peters	JP Assoc
Trish dela Motte	Once Upon A Child 421 N Berkeley Blvd Goldsboro NC 27534
Lloyd Lowe	" "
Nancy FARMER	Once Upon A child Plato's closet Greensboro
Debbie Watts	Plato's Closet Raleigh
Scott Cline	Plato's Closet Durham, NC
Jennifer Bumgarner	Commerce
Rita Harris	Commerce
Ashley Jones	Regulatory Affairs NC

SENATE COMMERCE COMMITTEE
Tuesday, May 3, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on May 3, 2011 in room 1027 of the Legislative Building. Katie Brown of Fayetteville, Grant Murphy-Herndon of Durham and Hunter Rinehart of Indian Trail served as pages. Twenty-three members of the committee were present. Senator Brown presided as chair.

S.B. 144 – Cash Converters Must Keep Purchase Records

Senator Meredith was recognized to explain the bill. Senator Jackson moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS clarifies that a cash converter has a duty to not purchase property that is known to be stolen and also clarifies that criminal penalties apply if a cash converter fails to keep the required records. Senator Hise moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 405 – Amend Irrigation Contractors' Licensing Laws

Senator Hartsell was recognized to explain the PCS and Senator Meredith moved to adopt the PCS for discussion. The PCS creates a process by which the North Carolina Irrigation Contractors' Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. It also modifies the fee structure by adding a $250 reinstatement fee, allows the Board to assess the costs of a proceeding against an applicant or a licensee, adds a number of new definitions and reorganizes the provisions related to issuing licenses for entities. Senator McKissick moved for a favorable report. The motion carried. A copy of the PCS and the summary is attached.

S.B. 709 – Energy Jobs Act

Senator Rucho was recognized to explain the bill. Senator Meredith moved to adopt the PCS for discussion and the motion carried. The PCS would provide for the appropriation for royalties and revenues from offshore and onshore energy production; direct the Governor to develop a regional compact for offshore energy exploration; direct the Department of Environment and Natural Resources and the Energy Jobs Council to provide a report on the potential of onshore shale gas resources; amend the Energy Policy Act to reform the Energy Policy Council into the Energy Jobs Council and to change the membership, goals, and duties of the Council; and directs the Energy Jobs Council to delegate responsibilities to the State Energy Office. It clarifies that the Governor will develop an interstate compact for offshore energy and requires the Governor to report on the development of the compact no later than three months from the effective date of this act. The Governor is also directed to report her final recommendations to the Joint Regulatory Reform Committee by May 1, 2012. It also

requires the Secretary of State to provide certified copies of this act to the Governors of South Carolina and Virginia, and the legislative bodies of those states. Heather Fennell, a staff attorney with the Research Division, was recognized to explain the bill, section by section. Ivan Urlaub, NC Sustainable Energy Association's Executive Director, was recognized. He opposes the current version of the bill due to low number of jobs created for NC citizens and he asked for a more comprehensive bill. Margaret Hartsell, Environment NC, spoke in opposition stating that industry was pushing the bill which has no environmental safeguards and she expressed concern about the threat to the coastal tourism industry. Senator Berger offered an amendment to add two clean water environmentalists to the committee. Senator Rucho opposed the amendment. Senator Hunt offered perfecting language to Senator Berger who offered a second amendment for the addition of a single clean water expert to the committee. He moved for its passage and the motion carried. Due to time limits, the committee had to continue discussion of the bill at a future meeting.

The meeting adjourned at 11:56 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 709
PROPOSED COMMITTEE SUBSTITUTE S709-CSTD-25 [v.3]

5/2/2011 8:48:39 PM

Short Title: Energy Jobs Act. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE ENERGY PRODUCTION IN NORTH CAROLINA TO DEVELOP A SECURE, STABLE, AND PREDICTABLE ENERGY SUPPLY TO FACILITATE ECONOMIC GROWTH, JOB CREATION, AND EXPANSION OF BUSINESS AND INDUSTRY OPPORTUNITIES AND TO ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE.

Whereas, in April 2011, the President of the United States linked economic growth to energy independence and stated that the nation must increase its domestic energy production and efficiency while concurrently decreasing energy imports; and

Whereas, the United States government forecasts rising natural gas consumption, including a 40% increase in the use of natural gas for electric power generation; and

Whereas, North Carolina has had active offshore leases with estimated economically recoverable natural gas of approximately five trillion cubic feet specific to two individual lease blocks, each with an area of approximately nine square nautical miles; and

Whereas, North Carolina's 60 million acres of federal offshore waters is the largest along the Atlantic and the fourth largest in the United States; and

Whereas, the General Assembly authorized the creation of the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration in 2008 to study offshore hydrocarbon and other energy resources; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration heard testimony and received a report from the University of North Carolina Wind Study Group that found a yet to be quantified potential for utility-scale production of wind energy off the coast of North Carolina and possibly within eastern Pamlico Sound; and

Whereas, both State and federal agencies indicate a yet to be quantified potential for onshore energy resources in the State that include shale gas, nonedible biofuels crops in the agricultural and forestry industries, wind, and other alternative energy sources; and

Whereas, the findings in the April 2010 final report of the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration noted that potentially significant energy resources exist offshore North Carolina that included quantifiable estimates from the federal government of almost 30 trillion cubic feet of natural gas in offshore North Carolina and adjacent mid-Atlantic states; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration heard comments and received a report from the Southeast Energy Alliance that found production of natural gas and associated hydrocarbons offshore North Carolina would create more than 6,700 new job and add more than $659 million annually to the State's Gross Domestic Product over three decades, during which time this energy production could generate almost $10 billion in cost sharing of government revenues at an average of $484 million per year to the State; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration recommended that production of fossil fuel and alternative energy resources in the North Carolina's outer continental shelf should include provisions for revenue and royalty sharing directed to the State of North Carolina; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration recommended that North Carolina participate cooperatively in regional offshore energy endeavors with Virginia and South Carolina; and

Whereas, the General Assembly of South Carolina authorized an offshore energy study with findings in the final report, completed in 2009, recommending that the state of South Carolina should consider the development of an offshore natural gas industry with appropriate federal revenue sharing; and

Whereas, the General Assembly of the Commonwealth of Virginia authorized an offshore energy study of natural gas potential with findings in the final report, completed in 2006, recommending exploration and development of natural gas resources offshore Virginia as well as federal revenue sharing of these resources; and

Whereas, during the past few years, the Governor of Virginia, the General Assembly of the Commonwealth of Virginia, and the United States Congressional delegation for Virginia continue to proactively support, put forth legislation in both the Commonwealth and in the United States Congress, and ratify legislation in the Commonwealth to move forward with energy exploration, development, and production as well as ensuring federal revenue sharing of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Royalties and Revenue From Offshore and Onshore Energy Production. – Any revenues and royalties paid to the State as a result of offshore or onshore leasing, exploration, development, and production of all energy resources shall be appropriated and used for the following purposes:

(1) Twenty-four percent (24%) of such revenues and royalties shall be credited to the General Fund.

(2) Twenty percent (20%) of such revenues and royalties shall be credited to the Highway Trust Fund established under G.S. 136-176.

(3) Five percent (5%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Fifteen percent (15%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina System to establish and manage research and development fund for programs directly related to energy research and development.

(5) Thirty percent (30%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for coastal conservation, including, but not limited to, beach and inlet management projects, channel navigation and maintenance, public beach and water

access, water quality management, as well as fisheries and shellfish restoration.

(6) Five percent (5%) of such revenues and royalties shall be transferred to the State Ports Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) One percent (1%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State.

SECTION 2.(a) Development of Governors' Regional Interstate Offshore Energy Policy Compact. – The Governor is directed to commence development of a regional energy compact with the governors of South Carolina and Virginia in order to develop a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor is authorized to work directly with each of the three states' Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and productions within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

SECTION 2.(b) No later than three months after the effective date of this act, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report her final recommendations

for the three-state energy compact to the Joint Regulatory Reform Committee no later than May 1, 2012.

SECTION 3. Onshore Shale Gas. – The Department of Environment and Natural Resources shall, in conjunction with the Energy Jobs Council, created in G.S. 113B-2, as amended by Section 4 of this act, provide a comprehensive report to the Governor, the General Assembly, and the Joint Regulatory Reform Committee by May 1, 2012, that outlines the commercial potential of onshore shale gas resources within the State as well as the regulatory framework necessary to develop this resource. As part of this report, the Department shall review all existing State laws and regulations regarding natural gas and related onshore hydrocarbon production specific to shale gas. The Department shall also review existing laws and regulations in states currently exploring for or producing shale gas, including Texas, Pennsylvania, and Alabama, as well as related federal regulations and programs. In addition, the Department shall do all of the following for inclusion in its report under this section:

(1) Review State laws and regulations, including G.S. 113-393(d) and 15 NCAC 05D, and provide recommendations on amendments and additions to address issues related to shale gas exploration, development, and production, including horizontal drilling, well permitting, well spacing, maximum permitted well depth, reporting requirements, bonding requirements, fees, and penalties.

(2) Review State laws and regulations, including G.S. 87-88(c) and 15A NCAC 02C, and provide recommendations on amendments and additions to address issues related to shale gas exploration, development, and production, including hydraulic fracturing, reporting requirements for fracturing fluids, environmental management of fracturing fluids, water use, and groundwater protection. In addition, provide recommendations on the reuse, recycling, and disposal requirements for waste hydraulic fluids, water, and related solid waste and recommend well drilling, casing, and cementing standards for wells that may be subject to hydraulic fracturing.

(3) Provide an inventory of all water supplies and evaluate the availability of water supply and potential impacts on other water users in any area of shale gas interest identified by either the State Geologist or the United States Geological Survey.

(4) Develop a regulatory framework proposal, including agencies, staffing, processes, permit requirements, penalties, fees, and reporting requirements necessary to evaluate the technical and public safety merits of shale gas exploration and energy production and, where appropriate, outline processes for the provision of permit oversight, approval, and management.

SECTION 4.(a) Amend Energy Policy Act. – The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 4.(b) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

(3) It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of

energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource ~~planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North Carolina.~~planning, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 4.(c) G.S. 113B-2 reads as rewritten:

"**§ 113B-2. Creation of Energy ~~Policy~~ Jobs Council; purpose of Council.**

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of Commerce.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of Commerce.

(c) The Energy ~~Policy~~ Jobs Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 4.(d) G.S. 113B-3 reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 12 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Commerce.

(3) ~~Twelve~~ Eleven public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~October 1, 2011, and ~~each such appointee shall serve until January 31, 2011. Thereafter,~~ the appointed members ~~of the General Assembly~~ shall serve ~~two-year terms, and the appointed public members shall serve four-year~~ four-year terms. ~~A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be ~~experienced in the natural gas industry;~~experienced in offshore natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist or a person with experience in the financing or business development or an energy-related business, to be appointed by the President Pro Tempore.

(5) One member shall be ~~experienced in environmental protection;~~a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, other than wind energy, to be appointed by the Speaker of the House of Representatives.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

~~(10) One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;~~One member shall be a representative with experience in wind energy, to be appointed by the Governor.

~~(11) One member shall be experienced in low-income energy policy matters or low-income residential weatherization.~~One member shall be a representative with experience in environmental management, appointed by the Speaker of the House.

~~(12) One member shall be experienced in the petroleum industry.~~One member shall be involved with the biofuels industry, to be appointed by the President Pro Tempore."

SECTION 4.(e) G.S. 113B-4 reads as rewritten:

"**§ 113B-4. Chairman of Council; replacement; reimbursement of members.**

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a~~The Secretary of Commerce shall serve as chair of the Council.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

SECTION 4.(f) G.S. 113B-6 reads as rewritten:

"**§ 113B-6. General duties and responsibilities.**

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy ~~Policy~~Jobs Council ~~shall~~ may delegate its duties where appropriate to the State Energy Office. Provided, however, the Council shall provide oversight and approval to the duties delegated to the State Energy Office. The Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of ~~energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy economy;~~domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable."

SECTION 4.(g) G.S. 113B-7 reads as rewritten:

"**§ 113B-7. Energy Efficiency Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy ~~Policy~~ Jobs Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 4.(h) G.S. 113B-8(a) reads as rewritten:

"**§ 113B-8. Energy Management Plan; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976."

SECTION 4.(i) G.S. 113B-9 reads as rewritten:

"**§ 113B-9. Emergency Energy Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) Within four months of July 1, 1975:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy ~~Policy~~ Jobs Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the Energy ~~Policy~~ Jobs Council shall prepare and submit to the Energy ~~Policy~~ Jobs Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy ~~Policy~~ Jobs Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy ~~Policy~~ Jobs Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy ~~Policy~~ Jobs Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy ~~Policy~~ Jobs Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy ~~Policy~~ Jobs Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy ~~Policy~~ Jobs Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The Energy ~~Policy~~ Jobs Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update said program upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 4.(j) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) Beginning January 1, 1977, and every ~~year~~two years thereafter, the Energy ~~Policy~~ Jobs Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the chairman of the Utilities Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;

(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;

(7) A summary of the Council's activities since ~~its inception,~~the last report, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 4.(k) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker, as chairman, the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie."

SECTION 4.(l) G.S. 113B-23 reads as rewritten:

"**§ 113B-23. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the Energy ~~Policy~~ Jobs Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 4.(m) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 5.(a) Technical Conforming Statutory Changes. – The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

Energy ~~Policy~~ Jobs Council."

SECTION 5.(b) G.S. 113B-5 reads as rewritten:

"§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 5.(c) G.S. 113B-11 reads as rewritten:

"§ 113B-11. Powers and authority.

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) The Department of Commerce shall provide the staffing capability to the Energy ~~Policy~~ Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article. The Utilities Commission is hereby ~~authorized~~ directed to make its staff available to the Council to assist in the development of a State energy policy."

SECTION 5.(d) G.S. 114-4.2D reads as rewritten:

"§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council and Energy Efficiency Program of the Department of Commerce.

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council and Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 5.(e) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 5.(f) G.S. 143-345.13 reads as rewritten:

"§ 143-345.13. Reporting of stocks of coal and petroleum fuels.

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the

Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 6.(a) Miscellaneous Provisions. – Notwithstanding G.S. 113B-3 or any other law to the contrary, the memberships of all members of the Energy Policy Council serving as of the effective date of this act shall be terminated on the effective date of this act.

SECTION 6.(b) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 6.(c) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation, the Governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the U.S. Department of the Interior, and the President of the United States.

SECTION 6.(d) This act is effective when it becomes law.

SENATE BILL 709: Energy Jobs Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 3, 2011
Introduced by:	Sens. Rucho, Brown, Tucker	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S709-CSTD-25		

SUMMARY: ***The PCS to Senate Bill 709 would provide for the appropriation of royalties and revenues from offshore and onshore energy production; direct the Governor to develop a regional compact for offshore energy exploration; direct the Department of Environment and Natural Resources and the Energy Jobs Council to provide a report on the potential of onshore shale gas resources; amend the Energy Policy Act to reform the Energy Policy Council into the Energy Jobs Council and to change the membership, goals, and duties of the Council; and authorizes the Energy Jobs Council to delegate responsibilities to the State Energy Office. The PCS as discussed by the Committee on April 28, 2011 made clarifying changes to the development of the interstate compact for offshore energy by the Governor, including the reporting requirements. This PCS makes those changes as well as the following:***

- ***Changes the percentage distribution of royalties and revenues from offshore and onshore energy production, as outlined below.***
- ***Makes changes to the membership of the Energy Jobs Council, including the addition of three members.***
- ***Allows the Jobs Council to delegate duties to the State Energy Office, provided there is oversight, but removes the specific statutory requirements to delegate certain duties to the State Energy Office.***
- ***Requires a certified copy of the act to be provided to the Secretary of the US Department on the Interior and the President of the United States.***

BILL ANALYSIS:

Section 1, Royalties and Revenues from Offshore and Onshore Energy Production: Provides that any revenues or royalties paid to the State from offshore or onshore leasing, exploration, development, and production of energy shall be used for the following purposes:

- 24% (was 25%) to the General Fund.
- 20% (remains the same) the Highway Trust Fund.
- 5% (was 15%) to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation related to energy exploration and development and related energy infrastructure. The funds may be used as financial assistance for students attending community college to receive vocational training through this curriculum.
- 15% (remains the same) to the Board of Governors of The University of North Carolina to establish and manage research and development fund for programs directly related to energy research and development.
- 30% (was 15%) to the Department of Environment and Natural Resources for coastal conservation, including, beach and inlet management projects, channel navigation and

maintenance, public beach and water access, water quality management, as well as fisheries and shellfish restoration.

- 5% (remains the same) to the State Port Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.
- 1% (was 5%) to the Department of Commerce for recruitment of energy-related industries to the State.

Section 2, Governor's Regional Intestate Offshore Energy Policy Compact: Directs the Governor to develop a regional compact with the governors of South Carolina and Virginia to develop a regional strategy for exploration of offshore energy resources. The Governor is directed to work with the states' Congressional delegations, the US Department of the Interior, the US Department of Energy, the US Environmental Protection Agency, and other appropriate agencies to develop strategies for increasing domestic energy supply. The compact must include provisions to address the following:

- Timely review and consideration of permits and proposals at both the state and federal level to identify and quantify natural gas and related hydrocarbon resources along the continental margin.
- Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.
- Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.
- Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

By three months after the effective date of this act, and every 3 months thereafter, the Governor must report to the General Assembly on the progress of complying with this section. The Governor is also directed to report her final recommendations to the Joint Regulatory Reform Committee by May 1, 2012.

Section 3, Onshore Shale Gas: Directs the Department of Natural Resources and the Energy Jobs Council (as created in Section 4 of the bill) to provide a comprehensive report to the Governor, the General Assembly, and the Joint Regulatory Reform Committee by May 1, 2012 that outlines the commercial potential of onshore shale gas resources within the State and the regulatory framework necessary to develop the resource.

Section 4, Amend Energy Policy Act: Amends the Energy Policy Act to retitle the Act the Energy Policy and Jobs Act.

The legislative findings and purpose of the Act are amended to include the following statements:

- It is in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

- It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.
- It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.
- The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.
- It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability.

The Energy Policy Council is retitled the Energy Jobs Council. The purpose of the new council is to advise and make recommendations to increase domestic energy exploration, development, and production within the State and region to promote economic growth and jobs. The membership of the Council is amended to the following:

- The Secretary of Commerce, who shall serve as Chair.
- Appointed by the Governor:
    - A representative of an investor-owned electric public utility.
    - An individual experienced in offshore gas development and exploration.
    - *An individual with experience in wind energy.*
- Appointed by the President Pro Tempore:
    - A representative of an investor-owned gas public utility.
    - An energy economist, or *a person with experience in the financing or business development of an energy-related business.*
    - A geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition.
    - *An individual involved with the biofuels industry.*
- Appointed by the Speaker of the House:
    - An industrial energy consumer.
    - An individual knowledgeable of alternative and renewable energy sources, *other than wind energy.*
    - A member with experience in trucking, rail, or shipping transportation.
    - *A representative with experience in environmental management.*

The terms of the current members of the Energy Policy Council will terminate on the effective date of this act. The new appointments will be made by October 1, 2011.

The goal of the Energy Jobs Council is to identify and utilize domestic energy sources to ensure a secure, stable and predictable energy supply. The duties of the Council are amended to include the following:

- To develop and recommend a comprehensive State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of domestic energy resources.
- To facilitate the expansion of the domestic energy supply.
- To actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

The Energy Policy Council is directed to delegate duties to the State Energy Office, provided the Council provides oversight and approval of the delegated duties.

Sections 5 and 6: Makes technical and conforming changes to the General Statutes.

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

S709-SMTD-37(CSTD-25) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 709

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S709-ATD-71 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
S709-CSTD-25

Date May 3 ,2011

Senator Stein

moves to amend the bill on page 7, lines 25 through 28, by rewriting the lines to read:
" and future sources of energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy ~~economy;~~economy including smart grid; domestic energy resources".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 709

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S709-ATD-72 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S709-CSTD-25

Date May 3 ,2011

Senator Stein

moves to amend the bill on page 5, lines 14 through 19, by rewriting the lines to read:
"energy policy to encompass comprehensive energy resource planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North ~~Carolina.~~Carolina,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 709

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

S709-ATD-73 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S709-CSTD-25

Date May 3 ,2011

Senator Stein

moves to amend the bill on page 1, lines 8 and 9 by inserting between the lines:

"Whereas, renewable energy and energy efficiency industries in North Carolina comprise more than 1,100 companies and currently employ more than 12,500 North Carolinians, representing a 22% growth in jobs from 2009 to 2010; and".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 709

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S709-ATD-71 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
S709-CSTD-25

Date May 3 ,2011

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Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 709

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

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Comm. Sub. [YES]
Amends Title [NO]
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Amendment Sponsor

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Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

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AMENDMENT
Senate Bill 709

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 297

Short Title:	Durham/Small Business Enterprise.	(Local)
Sponsors:	Senators McKissick and Atwater.	
Referred to:	Commerce.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO AUTHORIZE THE CITY TO ESTABLISH A SMALL BUSINESS ENTERPRISE PROGRAM TO PROMOTE THE DEVELOPMENT OF SMALL BUSINESSES IN THE CITY AND TO ENHANCE THE OPPORTUNITIES FOR SMALL BUSINESSES TO PARTICIPATE IN CITY CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter VI of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to read as follows:

"Sec. 84.5. Small Business Enterprise Program. (a) The City may establish a race and gender neutral small business enterprise program to promote the development of small businesses in the Durham Metropolitan Statistical Area, and to enhance opportunities for small businesses to participate in City contracts. The City may define the term 'small business enterprise' as appropriate and consistent with the City's contracting practices. The City may establish bid and proposal specifications that include subcontracting goals and good faith efforts requirements to enhance participation by small business enterprises in City contracts. Notwithstanding the provisions of G.S. 143-129 and G.S. 143-131, the City may consider a bidder's efforts to comply with small business enterprise program requirements in its award of City contracts and, if a bidder is determined to have failed to comply with the requirements, the City may, within its discretion, refuse to award a contract to the bidder.

(b) The small business enterprise program authorized by this section is intended to supplement and not replace the requirements of G.S. 143-128.2, 143-131, or 143-135.5. Any goals or efforts established to achieve minority and women business participation consistent with the requirements of G.S. 143-128.2, 143-131, or 143-135.5 shall take precedence over goals for small business enterprise participation established under the program authorized by this section. A small business enterprise program established pursuant to this section shall be deemed consistent with the public policy of the State of North Carolina to promote and utilize small and underutilized business enterprises as set forth in G.S. 143-128.2, 143-128.3, and 143-135.5."

SECTION 2. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

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

SENATE BILL 297:
Durham/Small Business Enterprise

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 2, 2011
Introduced by:	Sens. McKissick, Atwater	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 297 would amend Durham's City Charter to allow the City to establish a small business enterprise program to promote the development of small businesses in the Durham Metropolitan Statistical Area.***

CURRENT LAW: Pursuant to G.S. 143-129 and G.S. 143-131, local governments must award contracts to the lowest responsive, responsible bidder. Formal bidding requirements apply to contracts for the purchase of apparatus, supplies, materials and equipment costing $90,000 or more and to construction or repair contracts costing $500,000 or more. Informal bidding applies to contracts for the purchase of apparatus, supplies, materials and equipment costing $30,000 or more, but less than $90,000, and to construction or repair contracts costing $30,000 or more, but less than $500,000. However, Section 84 of the Durham Charter requires that the City use formal bidding for all contracts for the purchase of apparatus, supplies, materials and equipment costing more than $5,000.

G.S. 143-128.2 encourages minority business participation in public construction projects through setting a 10% participation goal. G.S. 143-131 and G.S. 143-135.5 encourage local governments to use small, minority, physically handicapped and women contractors in construction contracts.

BILL ANALYSIS: Senate Bill 297 is a local act that amends the Charter of the City of Durham to allow the City to establish a small business enterprise program to promote the development of small businesses in the Durham Metropolitan Statistical Area. The City may define the term "small business enterprise and establish bid and proposal specifications to enhance those businesses' participation in City contracts. The City could consider a bidder's compliance with the small business enterprise program requirements in its award of a City contract and may refuse to award a contract to a bidder that does not comply with the requirements. The program is intended to supplement and not replace existing contracting requirements and is deemed to be consistent with the public policy of the State to promote and utilize small and underutilized business enterprises.

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

BACKGROUND: The United States Census Bureau defines a Metropolitan Statistical Area (MSA) as a Core Based Statistical Area having at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. A MSA is a geographical region with a relatively high population density at its core and close economic ties throughout the area. MSAs are not legally incorporated as a city or town would be, nor are they legal administrative divisions like counties. The Durham MSA is comprised of Durham, Orange, Person and Chatham counties.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/3/2011

S. B. No. 709 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Sen.) Berger

moves to amend the bill on page 5, line 41

( ) WHICH CHANGES THE TITLE

by deleting the term "12" and substituting the term "13";

and on page 6, by inserting the following ~~between~~ on lines ~~47 and 48.~~ 17 & 18 between

"(26) One member who is active in a community based non-profit organization whose main goals are advocacy of the protection of clean water, to be appointed by the Governor."

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Brown

PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027

DATE: 5-3 **TIME:** 11 AM

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

Page Name	Hometown	Sponsoring Senator
1 Katie Brown	Fayetteville	Meredith
2 Grant Murphy Herndon	Durham	Atwater
Hunter Rinehart	Indian Trail	Tucker
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

May 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Raum	Troutman Sanders
Dennis D. Hoetch	AARP
Brian O'Hara	NC Offshore Wind Coalition
Kris Coracini	EDF
Fran Holcomb	NCSEA
Mia Bailey	Electri Cities of NC, Inc.
Rick Zechini	Progress Energy
K W Kaylor	Kaylor Law Firm
John Bode	BCS
Eldon Newton	interested citizen
Bea Newton	" "

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Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lauren Whaley	NCCUL
DAN CRAWFORD	NCLCV
Rachel Lee	Sen. Buck Newton
John Poteat	NCAHH
David M. Ford	Sen. Davis
Shagan Miller	CUCA
Paul Stam	NCBA
	NCBA
Jesse Hays	NCHBA
David Crawford	AIA NC

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
James Sauls	Raleigh Economic Development
Tony Beasley	Garner Economic Development
Roistz Lttleph	Senator Mckissick
George Everett	Duke Energy
Kathy Hawkins	Duke Energy
Jennifer Bumgarner	NC Dept of Commerce
Meg Mallen Ashill	SELC
Joe Schwark	Ridgelet Weekly
Will Culpepper	MVA
John Monaghan	Piedmont Natural Gas
Jim Simon	NCDENR
Chip Killian	Nelson Mullins

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NAME	FIRM OR AGENCY AND ADDRESS
Will Morgan	Sierra Club
Elizabeth Ouzts	EnvironmentNC
Margaret Hartzell	Environment North Carolina
S Watson	NCUC
Brie McAuley	PSNC Energy
Emily Grimm	MWC
Christina Hartzell	CMPH
[illegible]	FCB
Peter Barnes	NCGA
Mark Fleming	BCBSNC

Principal Clerk
Reading Clerk

Cancelled Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 5, 2011	11:00 AM	1027 LB

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S513 – Allow Saving's Promotion Raffles has been added to the agenda.

SENATE
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AND
BILL SPONSOR NOTICE

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DAY	DATE	TIME	ROOM
Thursday	May 5, 2011	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 222	Electric Vehicle Incentives.	Representative Lewis Representative Gibson, III Representative Samuelson
SB 293	Catawba Ecocomplex Renewable Energy.	Senator Allran
SB 513	Allow Savings Promotion Raffles.	Senator Clary Senator Gunn
SB 731	Zoning/Design and Aesthetic Controls.	Senator Clodfelter

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S293 – Catawba Ecocomplex Renewable Energy has been removed from the agenda.

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Principal Clerk ____
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Senator Harry Brown, Chair

SENATE COMMERCE COMMITTEE
Thursday, May 10, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on May 10, 2011 in room 1027 of the Legislative Building. Alexis McDonald of Raleigh and Antoinette Watkins of Albemarle served as pages. Twenty-three members of the committee were present. Senator Brown presided as chair.

H.B. 222 – Electric Vehicle Incentives

Representative Lewis was recognized to explain the bill. Senator Meredith moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The bill defines 'plug-in electric vehicle', authorizes those vehicles to operate in HOV lanes, and exempts them from the emissions inspection requirement. The PCS adds to the bill the language that the Senate Commerce Committee added to the Senate companion bill (S194) to specify that modifications to the drive train would cause a vehicle to be excluded from the definition of a 'plug-in electric vehicle.' Senator Meredith moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 513 – Allow Savings Promotion Raffles

Senator Gunn was recognized to explain the bill which allows credit unions to conduct savings promotion raffles. Senator Davis moved for a favorable report. The motion carried. A copy of the bill and the summary is attached.

S.B. 731 – Zoning/Design and Aesthetic Controls

Senator Clodfelter was recognized to explain the bill. Senator Hise moved to adopt the PCS for discussion and the motion carried. The PCS prohibits cities and counties from adopting zoning ordinances that regulate building design elements of residential structures containing four or fewer dwelling units. The prohibition would not apply if the residential structure was located in an area designated as a local historic district, in an area listed on the National Register of Historic Places, individually designated national historic landmarks, or if the regulation directly and substantially related to applicable fire and life safety codes. Ben Hitchings, President-Elect of the NC Chapter of the American Planning Association, was recognized to speak in opposition to the bill. He cited concerns regarding property values and landmark sites not yet designated. Lisa Martin, Director of Government Affairs of the NC Homebuilders Association, was recognized to speak in favor of the bill. She highlighted a community designating specific house plans that will prevent elderly or handicapped homeowners from the community. Senator Berger moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 11:50 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, May 10, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 222	Electric Vehicle Incentives.	Rep. Lewis Rep. Gibson Rep. Samuelson
SB 513	Allow Savings Promotion Raffles.	Sen. Clary Sen. Gunn
SB 731	Zoning/Design and Aesthetic Controls.	Sen. Clodfelter

Adjournment

Principal Clerk ____
Reading Clerk ____

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HB 222	Electric Vehicle Incentives.	Representative Lewis Representative Gibson, III Representative Samuelson
SB 513	Allow Savings Promotion Raffles.	Senator Clary Senator Gunn
SB 731	Zoning/Design and Aesthetic Controls.	Senator Clodfelter

Senator Harry Brown, Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, May 10, 2011

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

FAVORABLE

S.B. **513** Allow Savings Promotion Raffles.
Sequential Referral: None
Recommended Referral: None

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

S.B. **731** Zoning/Design and Aesthetic Controls.
Draft Number: 75157
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **222** Electric Vehicle Incentives.
Draft Number: 30328
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:
S513 – Sen. Gunn
S731 – Sen. Clodfelter
H222 - Sen. Meredith

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 222*
Committee Substitute Favorable 4/13/11
Third Edition Engrossed 4/14/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H222-CSRC-17 [v.1]

4/28/2011 7:26:11 AM

Short Title: Electric Vehicle Incentives. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PLUG-IN ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES AND TO EXEMPT PLUG-IN ELECTRIC VEHICLES FROM THE EMISSIONS INSPECTION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(28a) Plug-in electric vehicle. – A four-wheeled motor vehicle that meets each of the following requirements:

a. Is made by a manufacturer primarily for use on public streets, roads, and highways and meets National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571.

b. Has not been modified from original manufacturer specifications with regard to power train or any manner of powering the vehicle.

c. Is rated at not more than 8,500 pounds unloaded gross vehicle weight.

d. Has a maximum speed capability of at least 65 miles per hour.

e. Draws electricity from a battery that has all of the following characteristics:

1. A capacity of not less than four kilowatt hours.

2. Capable of being recharged from an external source of electricity.

...."

SECTION 2. G.S. 20-146.2(a) reads as rewritten:

"**§ 20-146.2. Rush hour traffic lanes authorized.**

(a) HOV Lanes. – The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with

a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to any of the following:

(1) ~~motorcycles or~~ Motorcycles.

(2) ~~vehicles~~ Vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants.

(3) ~~HOV lane restrictions shall not apply to emergency~~ Emergency vehicles. As used in this ~~subsection,~~ subdivision, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency.

(4) Plug-in electric vehicles as defined in G.S. 20-4.01(28a), regardless of the number of passengers in the vehicle. These vehicles must be able to travel at the posted speed limit while operating in the HOV lane."

SECTION 3. G.S. 20-183.2(b) reads as rewritten:

"(b) Emissions. – A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

...

(9) It is not a plug-in electric vehicle as defined in G.S. 20-4.01(28a)."

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

HOUSE BILL 222:
Electric Vehicle Incentives

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2011
Introduced by:	Reps. Lewis, Gibson, Samuelson	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H222-CSRC-17		

SUMMARY: House Bill 222 defines 'plug-in electric vehicle', authorizes those vehicles to operate in HOV lanes, and exempts them from the emissions inspection requirement.

The PCS adds to the House bill language the Senate Commerce Committee added to the Senate companion bill (SB194) to specify that modifications to the drive train would cause a vehicle to be excluded from the definition of a "plug-in electric vehicle."

The House Bill differs from SB194 (as passed by the Senate) in that it does not include a provision that limited the definition to vehicles acquired by the taxpayer on or after October 1, 2010.

CURRENT LAW AND BILL ANALYSIS:

Plug-in electric vehicles. House Bill 222 would define plug-in electric vehicle as a four-wheeled motor vehicle that is manufactured primarily for use on public highways, has not been modified from the original manufacturer specifications as to the power train or any manner of powering the vehicle, is rated not more than 8,500 pounds unloaded gross vehicle weight, has a maximum speed of at least 65 mph, and draws electricity from a battery.

High occupancy vehicle (HOV) lanes. HOV lanes are travel lanes designated for use by vehicles with a specified number of passengers. HOV lane restrictions do not apply to motorcycles, vehicles designed to transport 15 or more passengers, or emergency vehicles. House Bill 222 would authorize plug-in electric vehicles to use HOV lanes, regardless of the number of passengers in the vehicle.

Emissions inspection. Generally, registered motor vehicles are subject to safety inspections and emissions inspections (if registered in an emissions county). House Bill 222 would exempt plug-in electric vehicles from the emissions inspection requirement.

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

Wendy Graf Ray, counsel to House Transportation, substantially contributed to this summary.

H222-SMRC-21(CSRC-17) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 513*

Short Title:	Allow Savings Promotion Raffles.	(Public)
Sponsors:	Senators Gunn, Clary; Brock, Daniel, Davis, Forrester, Hise, Mansfield, Pate, Preston, Rabon, Tillman, and Tucker.	
Referred to:	Commerce.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW CREDIT UNIONS TO CONDUCT SAVINGS PROMOTION RAFFLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-309.15 is amended by adding a new subsection to read:

"(h) Notwithstanding any other subsection of this section, it is lawful for a credit union to conduct a savings promotion raffle under G.S. 54-109.64."

SECTION 2. Article 14F of Chapter 54 of the General Statutes is amended by adding a new section to read:

"**§ 54-109.64. Savings promotion raffles.**

A credit union may offer a savings promotion raffle in which the sole consideration required for a chance of winning designated prizes is the deposit of a minimum specified amount of money in a savings account or other savings program offered by the credit union. A credit union shall maintain records sufficient to facilitate an audit of the savings promotion raffle, shall conduct the savings promotion raffle in a safe and sound manner, and shall fully disclose the terms and conditions of the promotion to account holders and prospective account holders of the credit union."

SECTION 3. This act becomes effective October 1, 2011.

SENATE BILL 513:
Allow Savings Promotion Raffles

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 10, 2011
Introduced by:	Sens. Gunn, Clary	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 513 would allow credit unions to conduct savings promotion raffles.

[As introduced, this bill was identical to H583, as introduced by Reps. Sager, Shepard, Fisher, which is currently in House Banking.]

CURRENT LAW: G.S. 14-309.15 allows nonprofits to hold two raffles per year. A raffle is defined as "a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances." The maximum case prize that may be offered is $125,000 in cash, merchandise with a fair market value of $125,000, or real property with a maximum appraised value of $500,000. At least 90% of the net proceeds of a raffle must be used by the nonprofit for charitable, religious, educational, civic, or other nonprofit purposes. Violations of G.S. 14-309.15 are a Class 2 misdemeanor.

Articles 14A through 14L of Chapter 54 govern credit unions. Credit unions are cooperative, nonprofit associations organized for the purpose of encouraging thrift and creating a source of credit at fair and reasonable rates.

BILL ANALYSIS: Section 1 of the bill would amend G.S. 14-309.15 to authorize a credit union to hold a savings promotion raffle.

Section 2 of the bill would create a new section in Article 1414F of Chapter 54 to allow credit unions to provide saving promotion raffles. The sole consideration for the raffle would be a deposit of money in a savings account. The credit union must maintain records of the raffle, and fully disclose the terms and conditions of the promotion.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

S513-SMTD-42(e1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 731
PROPOSED COMMITTEE SUBSTITUTE S731-CSRC-24 [v.4]

5/9/2011 3:56:44 PM

Short Title: Zoning/Design and Aesthetic Controls. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR ZONING CONTROL OF STRUCTURAL DESIGN AND AESTHETICS IN DESIGNATED HISTORIC DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-381 is amended by adding a new subsection to read:

"(g) Regulations relating to building design elements adopted under Parts 2 and 3 of Article 19 of this Chapter, or adopted pursuant to any recommendation made under G.S. 160A-452(6)c., may not be applied to residential structures containing four or fewer dwelling units, except under the following circumstances:

(1) In areas designated as local historic districts pursuant to G.S.160A-400.4.
(2) In areas listed on the National Register of Historic Places.
(3) To individually designated local, State, or national historic landmarks.
(4) The regulations are directly and substantially related to the requirements of applicable fire and life safety codes adopted under G.S. 143-138.

Regulations prohibited by this section may not be applied either in traditional zoning districts or through districts designated as parallel conditional districts. For purposes of this subsection, the phrase "building design elements" means exterior building color, type of style, or exterior cladding material, style or materials of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows and doors including garage doors, the number and types of rooms, and interior layout of rooms. The phrase does not include buffering or screening of development to minimize visual impacts or impacts of light and noise on surrounding, parking and loading areas, or signage of buildings or collections of buildings."

SECTION 2. G.S. 153A-340 is amended by adding a new subsection to read:

"(j) Regulations relating to building design elements adopted under Parts 2 and 3 of Article 18 of this Chapter, or pursuant to any recommendation made pursuant to G.S. 160A-452(6)c., may not be applied to residential structures containing four or fewer dwelling units, except under the following circumstances:

(1) In areas designated as local historic districts.
(2) In areas listed on the National Register of Historic Places.
(3) To individually designated local, State, or national historic landmarks.
(4) The regulations are directly and substantially related to the requirements of applicable fire and life safety codes adopted under G.S. 143-138.

Regulations prohibited by this section may not be applied either in traditional zoning districts or through districts designated as parallel conditional districts. For purposes of this subsection, the phrase "building design elements" means exterior building color, type of style, or exterior cladding material, style or materials of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows and doors including garage doors, the number and types of rooms, and interior layout of rooms. The phrase does not include buffering or screening of development to minimize visual impacts or impacts of light and noise on surrounding, parking and loading areas, or signage of buildings or collections of buildings."

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

SENATE BILL 731:
Zoning/Design and Aesthetic Controls

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S731-CSRC-24		Committee Counsel

SUMMARY: ***SB 731 would prohibit cities and counties from adopting zoning ordinances that regulate building design elements of residential structures containing four or fewer dwelling units. The prohibition would not apply if the residential structure was located in an area designated as a local historic district, in an area listed on the National Register of Historic Places, individually designated national historic landmarks, or if the regulation directly and substantially related to applicable fire and life safety codes.***

The PCS makes clarifying changes to the bill.

CURRENT LAW: Municipalities (Chapter 160A) and counties (153A) may adopt zoning and development regulation ordinances under G.S. 160A-381 and G.S. 153A-340, respectively. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Municipalities and counties may also create a "special appearance commission" pursuant to G.S. 160A-451, and confer upon the commission the authority to formulate and recommend the adoption of ordinances that will enhance the appearance of the municipality or county.

BILL ANALYSIS: SB731 would prohibit cities and counties from adopting zoning ordinances regulating building design elements for residential structures containing four or fewer dwelling units. The phrase "building design elements" means exterior building features such as color, type of style or cladding materials, style or materials of roof structure or porches, exterior nonstructural ornamentation, location and styling of windows or doors, and the number, type and interior layout of rooms. The phrase would not include buffering or screening of development to minimize visual impacts or impact of light and noise, or parking and signage.

The prohibition would not apply to, and cities or counties could adopt, ordinances regulating building design elements if the regulation is directly and substantially related to applicable fire and life safety codes or for residential structures that are:

- Located in areas designated as local historic districts
- Listed on the National Register of Historic Places,
- Individually designated as local, State national historic landmarks.

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

S731-SMRC-27(CSRC-24) v2

PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027 LB

DATE: 5-10 **TIME:** 11 AM

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

Page Name	Hometown	Sponsoring Senator
1 Alexis McDonald	Raleigh	Berger, Phil
2 Antoinette Watkins	Albemarle	William Purcell
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 10, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	Williams Mullen
Moses Carey	DOA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 10, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Williams Mullen
B Trahan	Ric Killian
[illegible]	[illegible]
Johanna Reese	DMV
[illegible]	[illegible]
Daniel Baum	Troutman Sanders
M.A Bailey	Electri Cities
Bill Rowe	NC Justice Center
Matthew Eisley	Smith Anderson
Carley Ruff	NCHC
Wendy Kelly	Policy Group

SENATE COMMERCE COMMITTEE
Thursday, May 19, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on May 19, 2011 in room 1027 of the Legislative Building. Alex Johnson of Charlotte, Micaela Percy of Cary and Rina Annisa of Indonesia served as pages. Twenty-six members of the committee were present. Senator Brown presided as chair.

H.B. 181 – Add Supt. To NC Econ. Dev. Bd.

Senator East was recognized to explain the bill. The bill increases the membership of the Economic Development Board from 38 to 39 members by adding the Superintendent of Public instruction, or designee, to the Board, as recommended by the Joint Legislative Joining Our Businesses and Schools Study Commission. Senator Jackson was recognized to offer an amendment which would allow the State Personnel Commission to establish policies and rules allowing employees moving from city and county government to State government to transfer their sick and annual leave. Stanley Moore, a fiscal analyst with the Fiscal Research Division, was recognized to answer questions. Senator Garrou questioned the germaneness of the amendment to the bill and moved for an unfavorable vote on the amendment. The bill was withdrawn from the agenda. A copy of the bill, the amendment, the actuarial note and the summary is attached.

S.B. 63 – Clarify Definition of Collection Agency

Senator Jenkins was recognized to explain the proposed committee substitute (PCS) and Senator Apodaca moved to adopt the PCS for discussion. The PCS clarifies that a regular employee of a duly licensed collection agency does not have to procure a collection agency permit even if the employee works outside North Carolina. Kory Goldsmith, a staff attorney with the Research Division, was recognized to explain the bill. Theresa Kostrzewa, a lobbyist, was recognized to further explain the bill and answer questions. Bill Rowe, a lobbyist with the NC Justice Center, was recognized to answer questions. Senator Clodfelter moved for a favorable report. The motion carried. A copy of the PCS and the summary is attached.

S.B. 385 – Small Business Assistance Records

Senator Hartsell was recognized to explain the bill. Senator Hise moved to adopt the PCS for discussion and the motion carried. The PCS exempts the following from the definition of a public record: 1) documents submitted to either the North Carolina Community College System's Small Business Center Network or The University of North Carolina's Small Business and Technology Development Centers by an individual seeking business counseling or technical assistance; and 2) documents created by either the Network or a center to provide the individual with business counseling or technical assistance. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 648 – Improve Enforcement/General Contractor Laws

Representatives Hastings and Hager were recognized to explain the bill. It amends the statutes dealing with general contractors by modifying the requirements for claiming the owner's exception to the licensing requirement. Lisa Martin, NC Homebuilders Association lobbyist, was recognized to further explain the bill and answer questions. The bill was withdrawn from the calendar. A copy of the bill and the summary is attached.

The meeting adjourned at 11:40 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Monday, May 23, 2011

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

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

S.B. **63** Clarify Definition of Collection Agency.

Draft Number:	55306
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **385** Small Business Assistance Records.

Draft Number:	15160
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:
S63 – Sen. Jenkins
S385 – Sen. Hartsell

HOUSE BILL 181*

Short Title:	Add Supt. to NC Econ. Dev. Bd.	(Public)
Sponsors:	Representative Glazier (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ADD THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE ECONOMIC DEVELOPMENT BOARD, AS RECOMMENDED BY THE JOINT LEGISLATIVE JOINING OUR BUSINESSES AND SCHOOLS (JOBS) STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-434(b) reads as rewritten:

"(b) Membership. – The Economic Development Board shall consist of ~~38~~39 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. The Secretary of Revenue shall serve as an ex officio, nonvoting member. The Secretary of the Department of Cultural Resources shall serve as an ex officio, nonvoting member. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the Superintendent of Public Instruction, or designee, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board. Effective with the terms beginning July 1, 1997, one of the Governor's appointees shall be a representative of a nonprofit organization involved in economic development and two of the Governor's appointees shall be county economic development representatives. The Governor shall designate a chair and a vice chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and G.S. 138-6, as the case may be. The members of the Economic

Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1."

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

HOUSE BILL 181:
Add Supt. to NC Econ. Dev. Bd

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 18, 2011
Introduced by:	Rep. Glazier	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 181 would increase the membership of the Economic Development Board from 38 to 39 members by adding the Superintendent of Public Instruction, or designee, to the Board, as recommended by the Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission.

CURRENT LAW: Currently, the Economic Development Board consists of 38 members including:

- The Secretary of Commerce, who serves as secretary of the Board.
- The Secretary of Revenue as nonvoting member.
- The Secretary of the Department of Cultural Resources as a nonvoting member.
- Four members of the House of Representatives, appointed by the Speaker.
- Four members of the Senate, appointed by the President Pro Tempore.
- The President of The University of North Carolina, or designee.
- The President of the North Carolina Community College System, or designee.
- The Secretary of State.
- The President of the Senate, or designee.
- 23 members appointed by the Governor, one of whom represents a nonprofit organization involved in economic development, and two of whom are county economic development representatives.

G.S. 143B-434 (a) sets forth the duties of the Board. (See, attachment)

BILL ANALYSIS: The Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission found that "communications between leaders in education and economic development is critical to preparing students to meet employment and workforce preparation needs of the State." House Bill 181 would add the Superintendent of Public Instruction to the membership of the Economic Development Board, as recommended by the JOBS Commission.

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

Karen Cochran-Brown, counsel to House on Job Developemtn , substantially contributed to this summary.

H181-SMRC-33(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 181*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H181-ARC-18 [v.3]

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

Date May 19 ,2011

Senator Jackson

moves to amend the bill on page 1, line 5, by inserting the following after the word "COMMISSION" and before the period:
"AND TO ALLOW EMPLOYEES MOVING FROM CITY AND COUNTY GOVERNMENT TO STATE GOVERNMENT TO PORT THEIR SICK AND ANNUAL LEAVE";

and on page 2, by deleting line 6 and substituting the following:

"**SECTION 2.** G.S. 126-4(5) reads as rewritten:

"**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

...

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. If an employee earns vacation or sick leave, the Commission shall allow transfer of any accrued vacation or sick leave from a city or county, to the extent that vacation was not paid as terminal leave nor did the employee retire with sick leave included as creditable service. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.

...."

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

H181-ARC-18-V-3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Actuarial Note

RETIREMENT

BILL NUMBER: Amendment to House Bill 181

SHORT TITLE: Add Supt. to NC Econ. Dev. Bd.

SPONSOR(S):

FUNDS AFFECTED: General Fund, Highway Fund, and Receipt Funds for the Teachers' and State Employees' Retirement System.

SYSTEM OR PROGRAM AFFECTED: Teachers' and State Employees' Retirement System.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Directs the State Personnel Commission to establish policies and rules to allow for the transfer of any accrued vacation leave or sick leave to the credit of any State employee that formerly worked with a city or county, provided they were not paid for it nor retired with sick leave included as creditable service.

Presently the State does not recognize any vacation leave or sick leave that was accumulated while an employee was employed by anyone other than State agencies and department, universities, community colleges and public schools. Sick leave is accumulated at the rate of 8 hours per month indefinitely by full-time employees of State agencies and department, universities, community colleges and public schools. During the time an employee is on sick leave, they receive full salary and all benefits. Sick leave may be used for:

1. illness or injury,
2. medical appointments,
3. temporary disability due to childbirth,
4. to care for member of immediate family (including care for mother during temporary disability),
5. death in immediate family,
6. donations to a member of the immediate family who is an approved voluntary shared leave recipient, and
7. adoption of a child, limited to a maximum of 30 days for each parent (which is equivalent to a biological mother's average period of disability)

Sick leave can also be used as creditable service at the time a member retires. On month of credit is allowed for each 20 days of sick leave. Members retiring with sick leave will have their monthly retirement check increased for remainder of their life.

ESTIMATED IMPACT ON STATE: Buck Consultants, the Retirement Systems' actuary, estimated the cost to the Teachers' and State Employees' Retirement System will increase by 0.01% for every 12,300 members that transfer sick leave assuming that each transfer three month of sick leave. They also estimate that the cost will be .01% if transfer vacation leave will increased their Average Final Compensation by 1%. They point out that county and city employers have varying sick leave and vacation leave policies and some local agencies grant sick leave in lieu of pay increases or other benefits.

Hartman & Associates, the General Assembly's actuary, have no information on the vacation or sick leave policies of cities and counties. They state about 3% to 4% of new hires have service with a local government. They estimate the cost could range from a negligible cost to about 0.02% with 0.01% being the midpoint. They assumed two weeks of sick leave was earned each year and 50% was transfer to the State.

The following is an estimate of what a 0.01% increase in the employer contribution rate would be:

	2011-12	2012-13	2013-14	2014-15	2015-16
General Fund	$988,300	$1,038,506	$1,091,262	$1,146,698	$1,204,950
Highway Fund	$44,500	$46,761	$49,136	$51,632	$54,255
Receipt Funds	$380,000	$399,304	$419,589	$440,904	$463,302
	$1,412,800	**$1,484,570**	**$1,559,986**	**$1,639,234**	**$1,722,507**

ASSUMPTIONS AND METHODOLOGY: Teachers' & State Employees' Retirement System The cost estimates of the System's Actuary are based on the employee data, actuarial assumptions and actuarial methods used to prepare the December 31, 2009 actuarial valuation of the System. The data included 316,647 active members with an annual payroll of $13.3 billion, 156,791 retired members in receipt of annual pensions totaling $3.2 billion and actuarial value of assets equal to $55.8 billion. Significant actuarial assumptions used include (a) an investment return rate of 7.25% which includes inflation of 3%, (b) projected salary increases between 4.25% to 9.10% which includes inflation of 3.5%, (c) RP-2000 Mortality tables for retirees are set back one year for male teachers, set forward one year for all general employees and unadjusted for female teaches and all law enforcement officers, (d) RP-2000 Mortality tables for disabled retirees are set back six years for males and set forward one year for females, (e) RP-2000 Mortality tables for active employees are set back one year for male teachers, set forward one year for all general employees and unadjusted for female teachers and all law enforcement officers, (f) rates of separation from active service based on System experience. The actuarial cost method used was the entry age normal cost method and an amortization period of nine years. Detailed information concerning these assumptions and methods are shown in the actuary's report, which is available upon request from Stanley Moore.

SOURCES OF DATA: Buck Consultants
Hartman & Associates, LLC

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910. The above information is provided in accordance with North Carolina General Statute 120-114 and applicable rules of the North Carolina Senate and House of Representatives.

PREPARED BY: Stanley Moore

Official Fiscal Research Division Publication

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: May 18, 2011

buckconsultants

A Xerox Company

May 6, 2011

Ms. Debra C. Bryan
Senior Deputy Director
for Policy and Communications
State of North Carolina
Department of State Treasurer
Retirement Systems Division
325 North Salisbury Street
Raleigh, NC 27603-1385

Re: Portability of Sick and Vacation Leave

Dear Ms. Bryan:

We have received your request regarding the portability of sick and vacation leave to the Teachers' and State Employees' Retirement System (TSERS).

This proposal would allow sick or vacation leave earned as a county or city employee to be converted to service or average final compensation (depending on the leave) under TSERS if the employee becomes a state employee as long as the vacation was not paid as terminal leave nor did the employee retire with sick leave included as creditable service.

Based on the results of the December 31, 2009 valuation of TSERS and assuming that employees transfer an additional three months of sick leave to TSERS under the terms of the proposal, the annual cost of this proposal is 0.01% of payroll for every 12,300 members that transfer such sick leave. Additionally, assuming that employees transfer additional vacation leave to increase their average final compensation in TSERS by 1% under the terms of the proposal, the annual cost of this proposed legislation is 0.01% of payroll for every 7,800 members that transfer such vacation leave.

The Retirement Systems Division has provided us information on members that began employment with TSERS in 2009 or 2010, had previously earned benefits for an employer covered by the Local Governmental Employees' Retirement System (LGERS) and would have been eligible to transfer sick leave to TSERS under the proposal. However, no information was provided on the amount of sick leave each such member would be able to transfer under the proposal. In addition, no information was provided for county or city employees of units that are not members of LGERS. Finally, no information was provided with respect to the amount of vacation leave that could be transferred under the proposal.

1911 Quorum Drive, Suite 200 • Dallas, TX 75254-7534
972.628.6800 • 972.628.6801 (fax)

As a final note, we would anticipate significant administration complications as a result of this proposal. County and city employers have varying sick leave and vacation accrual policies, which may complicate communication of balances to the state upon transfer. Additionally, because all State employees earn identical amounts of these leaves, whereas some of the local agencies grant additional sick leave in lieu of pay increases or other benefits, this proposal would create inequities for such employees that transfer to employers covered by TSERS.

I am an Enrolled Actuary, a Fellow of the Society of Actuaries, and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

If you have any questions or need additional assistance, please let us know.

Very truly yours,

Richard A. Mackesey, FSA, EA, MAAA
Principal, Consulting Actuary

RAM:km
\NC\COR\10505RM1.DOCX

HARTMAN & ASSOCIATES, LLC

ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

hartman@triad.rr.com

ıe: (336) 731-4038
ıax. (336) 731-2583

668 Link Road
Lexington, NC 27295

May 13, 2011

Mr. Stanley Moore
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: Proposal to Allow Employees Moving From City and County Government to State Government to Port Their Sick and Annual Leave

Dear Mr. Moore:

This proposed legislation would amend G.S. 126-4(5) to provide that a State employee who earns vacation or sick leave may transfer any accrued vacation or sick leave from a city or county, to the extent that vacation was not paid as terminal leave nor did the employee retire with sick leave included as creditable service. I have assumed this act is effective when it becomes law.

Under the Teachers' and State Employees' Retirement System (TSERS), a member receives one month of creditable service at retirement for each 20 days of unused sick leave. Excess vacation may be transferred to sick leave, and terminal payouts of unused vacation may increase the member's average compensation. These factors will increase the member's retirement allowance from the TSERS. Thus, allowing vacation and sick leave to be ported from local governments to State government will create a cost to the TSERS.

We do not have information on the vacation and sick leave policies of the various local governments. Based on information from the Department of State Treasurer, many local agencies have different sick leave and vacation accrual policies, and some agencies grant additional leave in lieu of pay increases or other benefits. No data exists for the amount of accrued leave that could be ported to the State under this legislation. Data was provided indicating that 3-4% of new hires have service with a local government that would be eligible to port under this legislation.

Based on the available information, I modeled various scenarios of leave ported to the State. Using these, I estimate the annual cost to the TSERS could range from a negligible cost to approximately 0.02% of payroll, depending on the amount of leave transferred. This is based on the data above and the TSERS valuation as of December 31, 2009. A midpoint cost of slightly under 0.01% of payroll was obtained assuming 2 weeks of sick leave are earned each year, 50% of sick leave is not used and ported to the State, minimal vacation leave is ported, and new hires with prior local service have the same demographics as other hires.

I am an independent consulting actuary and a member of the American Academy of Actuaries. I meet the Academy qualification standards for rendering the actuarial opinions contained in this report. This report was completed based on generally accepted actuarial principles and practices and is intended to meet the requirements of North Carolina G.S. 120-114. It is issued to assist the Fiscal Research Division in completing the required actuarial note and is not intended for any other party or for any other purpose.

I am available to answer any questions related to this report.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, FCA, EA
Consulting Actuary

MVH/mt

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 63
PROPOSED COMMITTEE SUBSTITUTE S63-CSRC-14 [v.4]

5/18/2011 3:28:48 PM

Short Title: Clarify Permit Req. Collection Agency E'ee. (Public)

Sponsors:

Referred to:

February 14, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT REGULAR EMPLOYEES OF DULY LICENSED DEBT COLLECTION AGENCIES ARE NOT REQUIRED TO OBTAIN A COLLECTION AGENCY PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-70-1 reads as rewritten:

§ 58-70-1. Permit from Commissioner of Insurance; penalty for violation; exception.

No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection agency business, as the same is hereinafter defined in this Article, until he or it shall have secured a permit therefor as provided in this Article. Any person, firm, corporation or association conducting or operating a collection agency or doing a collection agency business without the permit shall be guilty of a Class I felony. Any officer or agent of any person, firm, corporation or association, who shall personally and knowingly participate in any violation of the remaining provisions of this Part shall be guilty of a Class 1 misdemeanor. Provided, however, that nothing in this section shall be construed to require a regular employee of a duly licensed collection agency ~~in this State~~ licensed pursuant to this Article to procure a collection agency permit."

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

SENATE BILL 63:
Clarify Permit Req. Collection Agency E'ees

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 18, 2011
Introduced by:	Sen. Jenkins	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S63-CSRC-14		

SUMMARY: ***Senate Bill 63 clarifies that a regular employee of a duly licensed collection agency does not have to procure a collection agency permit even if the employee works outside North Carolina.***

CURRENT LAW: Under current law, debt collection agencies are required to obtain a permit from the Commissioner of Insurance before operating within the State. A regular employee of a duly licensed debt collection agency in this State is not required to obtain a debt collection agency permit. Operating a collection agency business without a permit is a Class I felony.

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

S63-SMRC-31(CSRC-14) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 385
PROPOSED COMMITTEE SUBSTITUTE S385-CSRC-29 [v.1]

5/19/2011 10:38:39 AM

Short Title: Small Business Assistance Records. (Public)

Sponsors:

Referred to:

March 22, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT SMALL BUSINESS ASSISTANCE RECORDS ARE NOT PUBLIC RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-78 reads as rewritten:

"**§ 115D-78. Access to information and public ~~records.~~records; small business counseling information.**

(a) In accordance with Chapter 132 of the General Statutes, all rules, regulations and public records of the State Board of Community Colleges, the Community Colleges System Office, and local boards of trustees shall be available for examination and reproduction on payment of fees by any person.

(b) Notwithstanding subsection (a) of this section, documents submitted to the North Carolina Community College System's Small Business Center Network by an individual seeking business counseling or technical assistance and documents created by the Network to provide the individual with counseling and technical assistance are not public records as defined by G.S. 132-1."

SECTION 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-43.16. Small business counseling information.**

Documents submitted to The University of North Carolina's Small Business and Technology Development Centers by an individual seeking business counseling or technical assistance and documents created by a Center to provide the individual with counseling and technical assistance are not public records as defined by G.S. 132-1."

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

SENATE BILL 385:
Small Business Assistance Records

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 19, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S385-CSRC-29		

SUMMARY: ***The PCS to SB385 would exempt the following from the definition of a public record:***

- ***Documents submitted to either the North Carolina Community College System's Small Business Center Network or The University of North Carolina's Small Business and Technology Development Centers by an individual seeking business counseling or technical assistance; and***
- ***Documents created by either the Network or a center to provide the individual with business counseling or technical assistance.***

CURRENT LAW: **Public Records Law** - G.S. 132-1(a) defines a public record as all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. G.S. 132-6 provides that every custodian of public records must permit any record in the custodian's custody to be inspected and examined by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law.

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

S385-SMRC-35(CSRC-29) v1

HOUSE BILL 648
Committee Substitute Favorable 4/20/11

Short Title: Improve Enforcement/General Contractor Laws. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND AMEND THE LAWS PERTAINING TO EXCEPTIONS AND BUILDING PERMITS AS RELATED TO GENERAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-1 reads as rewritten:

"**§ 87-1. "General contractor" defined; exceptions.**

(a) For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars ($30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

(b) This section shall not apply to the following:

(1) ~~persons or firms~~Persons, firms, or corporations furnishing or erecting industrial equipment, power plan equipment, radial brick chimneys, and monuments.

(2) ~~This section shall not apply to any person or firm~~Any person, firm, or corporation who constructs or alters a building on land owned by that person, ~~firm~~ firm, or corporation provided ~~such~~ (i) the building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and ~~provided further that, if such~~ (ii) the person, firm, or corporation complies with G.S. 87-14. If the building is not occupied solely by ~~such~~ the person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend ~~such~~ the building solely for occupancy by that person and his family, firm, or corporation.

(3) ~~This section shall not apply to any~~Any person engaged in the business of farming who constructs or alters a building on land owned by that person and used in the business of farming, when ~~such~~ the building is intended for use by that person after completion."

SECTION 2. G.S. 87-14 reads as rewritten:

"**§ 87-14. Regulations as to issue of building permits.**

(a) Any person, ~~firm~~ firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, ~~town~~ town, or county in North Carolina charged with the duty of issuing building or other permits for the construction of any

building, highway, sewer, ~~grading~~ grading, or any improvement or structure where the cost thereof is to be thirty thousand dollars ($30,000) or more, shall, before ~~he be~~being entitled to the issuance of ~~such permit,~~a permit, satisfy the following:

(1) ~~furnish~~ Furnish satisfactory proof to ~~such~~ the inspector or authority that ~~he~~ the person seeking the permit or another person contracting to superintend or manage the construction is duly licensed under the terms of this Article to carry out or superintend the ~~same,~~construction or is exempt from licensure under G.S. 87-1(b). If an applicant claims an exemption from licensure pursuant to G.S. 87-1(b)(2), the applicant for the building permit shall execute a verified affidavit attesting to the following:

a. That the person is the owner of the property on which the building is being constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation.

b. That the person will personally superintend and manage all aspects of the construction of the building and that the duty will not be delegated to any other person not duly licensed under the terms of this Article.

c. That the person will be personally present for all inspections required by the North Carolina State Building Code.

The building inspector or other authority shall transmit a copy of the affidavit to the Board, who shall verify that the applicant was validly entitled to claim the exemption under G.S. 87-1(b)(2). If the Board determines that the applicant was not entitled to claim the exemption under G.S. 87-1(b)(2), the building permit shall be revoked pursuant to G.S. 153A-362 or G.S. 160A-422.

(2) ~~and that he~~Furnish proof that the person has paid the license tax required by the Revenue Act of the State of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been ~~applied, and that he~~applied.

(3) Furnish proof that the person has in effect Workers' Compensation insurance as required by Chapter 97 of the General ~~Statutes;~~Statutes.

(b) ~~and it~~It shall be unlawful for ~~such~~ the building inspector or other authority to issue or allow the issuance of ~~such~~ a building permit pursuant to this section unless and until the applicant has furnished evidence that ~~he~~ the applicant is either exempt from the provisions of this ~~Article~~ Article and, if applicable, fully complied with the provisions of subdivision (a)(1) of this section, or is duly licensed under this Article to carry out or superintend the work for which permit has been applied; and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and further, that the applicant has in effect Workers' Compensation insurance as required by Chapter 97 of the General Statutes. Any building inspector or other ~~such~~ authority who is subject to and violates the terms of this section shall be guilty of a Class 3 misdemeanor and subject only to a fine of not more than fifty dollars ($50.00)."

SECTION 3. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure

under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present."

SECTION 4. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present."

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

HOUSE BILL 648:
Improve Enforcement/General Contractor Laws

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 19, 2011
Introduced by:	Reps. Hastings, Hager	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 648 amends the statutes dealing with general contractors by modifying the requirements for claiming the owner's exception to the licensing requirement.

[As introduced, this bill was identical to S708, as introduced by Sens. Hise, Tucker, White, which is currently in Senate Commerce.]

CURRENT LAW: Individuals or firms that construct, superintend, or manage the construction of any building, highway, public utility, grading, improvement or structure where the cost exceeds $30,000 or builds a manufactured modular building that meets the State Building Code is a "general contractor" engaged in general contracting in North Carolina. Subject to some exceptions, general contractors must be licensed under Article 1 of Chapter 87.

There are three exceptions to the definition of general contractor. Under the "owner exception," the definition of "general contractor" does not apply to any person, firm, or corporation who constructs or alters a building on land owned by that person, firm, or corporation, provided such building is intended solely for occupancy by that person and his family, firm, or corporation after completion.

BILL ANALYSIS: House Bill 648 would do all of the following:

Section 1 clarifies the exceptions to the definition of general contractor. Also clarifies that individuals or firms that fall under the owner exception must comply with G.S. 87-14, which provides regulations for the issuance of building permits for general contractors.

Section 2 amends G.S. 87-14 to provide that if a person applies for a building permit under the owner exception, then the applicant must execute a verified affidavit attesting to the following:

- The person is the owner of the property on which the building is constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation.
- The person will personally manage all aspects of the construction and that the duty will not be delegated to any other person not duly licensed.
- The person will be personally present for all inspections required by the North Carolina State Building Code.

This section also directs the building inspector or other authority to transmit a copy of the affidavit to the Board who will verify the exemption or revoke the building permit if the applicant is not exempt.

Sections 3 and 4 amend the statutes dealing with inspections of work in progress in counties and cities to provide that no inspection will be conducted without the owner being present if the permit was obtained by an owner exempt from licensure under G.S. 87-1(b)(2).

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

Brad Krehely, counsel to House Commerce, substantially contributed to this summary.
H648-SMTD-56(e2) v1

PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 5-19 TIME: 11 AM

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

Page Name	Hometown	Sponsoring Senator
1 Alex Johnson	Charlotte	Hartsell
2 Micaela Percy	cary	Berger, P.
3 Rina Annisa	Indonesia	Daniel
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

May 19, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NMRS

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

May 19, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Starling	NC DST
Steve Toole	NC DST
A. Solari	DST
Debra Bryson	DST- RSD
Gregg Thompson	NFIB
Carl Howell	DST
Sheria Reid	SOS
Dennis Patterson	OSA
Bruce Thompson	Retail Pac
Thomas Mann	[illegible]
Dan Fenton	City of Archdale

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mel Sollis	DCR
John Palumbo	NCAMA
Lauren Whaley	NCCLL
Virginia Sifchez	Harrell & Assoc.
[illegible]	NSS
[illegible]	CSS
Angel Sama	NSS
Bill Rowe	NC Justice Center
Anne Shaw	NCCCS SBCN
Scott R. Daugherty	SBTDC
Chuck Stone	SEANC
Mitch Leonard	SEANC

SENATE COMMERCE COMMITTEE
Thursday, June 2, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 2, 2011 in room 1027 of the Legislative Building. Eleanor Yarbrough of Goldsboro, Raj Sein of Wilson and Ralph Byrd of Wilson served as pages. Twenty-seven members of the committee were present. Senator Brown and Senator Gunn presided as chairs.

S.B. 778 – Confirm Edward Finley to Utilities Commission

Senator Brown was recognized to explain the bill. It provides for the confirmation of the appointment of Edward S. Finley, Jr., to the Utilities Commission. Pryor Gibson, from the Governor's office, was recognized to introduce Mr. Finley. Mr. Finley thanked the Committee for their time and gave a very brief outline of his previous service on the Utilities Commission. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the bill, the summary, Mr. Finley's curriculum vitae, and statement of economic interest is attached.

S.B. 438 – Clarify Motor Vehicle Licensing Law

Senators Brown, Blue and Jackson asked to be recused from discussing and voting on the bill due to potential conflicts of interest. Senator Meredith moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Senator Apodaca was recognized to explain the PCS which makes various changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law. John Policastro, a lobbyist for the NC Automobile Dealers Association, was recognized to further explain the bill and answer questions. Senator Hise moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 745 – Beer Franchise Law Clarifications

Senator Allran was recognized to explain the bill. Senator Meredith moved to adopt the PCS and the motion carried. The PCS amends the requirements for franchise agreements for beer, prohibits discrimination by beer suppliers and beer wholesalers, provides for the termination of franchise agreements by small breweries in certain situations, clarifies the definition of good cause for termination of a franchise agreement, clarifies provisions for monetary damages for wrongful termination of agreements, provides for mergers of wholesalers, and allows the ABC Commission to require mediation of certain disputes. John McMillan, representing Anheuser Busch, spoke in opposition to the bill. He stated that Anheuser does care about their distributors. Sandy Sands, representing MillerCoors, spoke in opposition stating that much of the information handed out is antiquated. Tim Kent, representing the NC Beer & Wine Wholesalers Association, spoke in favor of the bill. Chris Gardner, legal counsel to the NC Beer & Wine Wholesalers Association, was recognized to answer questions.

Senator Hise moved for a favorable report. The motion carried. A copy of the PCS, the summary, and the informational handouts is attached.

The meeting adjourned at 11:49 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, June 02, 2011

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

FAVORABLE

S.JR. **778** Confirm Edward Finley to Utilities Commission.
Sequential Referral: None
Recommended Referral: None

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

S.B. **438** Clarify Motor Vehicle Licensing Law.
Draft Number: 35254
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **745** Beer Franchise Law Clarifications.
Draft Number: 35253
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:
S778 – Sen. Brown
S438 – Sen. Apodaca
S745 – Sen. Allran

SENATE JOINT RESOLUTION 778

Sponsors:	Senator Brown.
Referred to:	Commerce.

May 9, 2011

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF EDWARD S. FINLEY, JR., TO THE UTILITIES COMMISSION.

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

Whereas, the term of Edward S. Finley, Jr., is expiring June 30, 2011; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the appointment of Edward S. Finley, Jr., to serve a term commencing July 1, 2011, and expiring June 30, 2019, on the North Carolina Utilities Commission; Now, therefore,

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

SECTION 1. The appointment of Edward S. Finley, Jr., to the North Carolina Utilities Commission for a new term beginning July 1, 2011, and expiring June 30, 2019, is confirmed.

SECTION 2. This resolution is effective upon ratification.

SENATE JOINT RESOLUTION 778:
Confirm Edward Finley to Utilities Commission

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2011
Introduced by:	Sen. Brown	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: HJR 90 confirms the appointment of Edward S. Finley, Jr. to the Utilities Commission, the current Chair of the Utilities Commission. Mr. Finley was initially appointed by Governor Easley to fill the vacancy on the Utilities Commission created by the resignation of Commissioner Jo Anne Sanford in 2007. His currently term expires June 30, 2011. His new term will expire June 30, 2019.

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

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

A Utilities Commissioner is presently paid a salary of $123,198.00 annually. There are fixed salary augmentations based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Chairman Finley's current salary is $137,203.

Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment. A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-10(i) provides, in part: "*Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.*" During the term of office, a Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

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

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies among the different types of utilities, and limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and complaints concerning the services of public utilities. The Commission also has limited authority over electric cooperatives and their subsidiaries, and municipal providers of electricity.

EFFECTIVE DATE: The resolution is effective upon ratification.

S778-SMTD-66(e1) v2

Edward S. Finley, Jr
2024 White Oak Road
Raleigh, North Carolina 27608
Home: 919-834-9222
Office: 919-733-6067
finley@ncuc.net

Employment:	Chairman - North Carolina Utilities Commission (Appointed to Commission February 2007; appointed to Chairmanship April 2007; reappointed to Chairmanship April 2009) Partner (resigned effective February 5, 2007), Hunton & Williams LLP, Attorneys at Law
Education:	University of North Carolina at Chapel Hill School of Law Juris Doctor with honors (1974) Order of the Coif North Carolina Law Review University of North Carolina at Chapel Hill Bachelor of Arts (1971) Phi Beta Kappa John Motley Morehead Scholar Award
Commission related: (former or current)	Tax Review Board; Organization of PJM States Inc., Board Member; Eastern Interconnection States Planning Collaborative, State Representative, Stakeholder Steering Committee Representative; NARUC – Electricity Committee; Agency for Public Telecommunications Board; Geographic Information Coordinating Council
Professional: (former or current)	American Bar Association, Member of Public Utilities Section; North Carolina Bar Association, Member of Administration of Courts Committee, Appellate Rules Committee, and Administrative Law Section; Tenth Judicial District Bar, Member of Grievance Committee; Wake County Bar Association, Chairman ABA Award Merit Committee; Chairman of Wake County North Carolina Board of Law Examiners Candidate Review Committee
Before leaving private practice - listed in:	Best Lawyers in America, North Carolina Super Lawyers

Edward S. Finley, Jr
2024 White Oak Road
Raleigh, North Carolina 27608
Home: 919-834-9222
Office: 919-733-6067
finley@ncuc.net

Community and Civic: (former or current)	First Presbyterian Church - Raleigh, NC, Elder, Chairman - Board of Deacons, Chair of Senior Pastor Nominating Committee; Peace College, Board of Trustees - Executive Committee, Foundation; New Hope Presbytery, Chairman - Foundation Board of Trustees, Moderator – Council, Commissioner to General Assembly; Lineberger Cancer Research Center Board (UNC-CH); University of North Carolina at Chapel Hill, Board of Visitors and Chancellor's Club; Greater Raleigh Chamber of Commerce, Chairman - Education Committee, Governmental Affairs; Union Presbyterian Seminary, Board of Trustees – Executive Committee, President's Advisory Council; Glenaire Continuing Care Retirement Community, Board of Trustees - Executive Committee, Foundation; City of Raleigh, Raleigh Telecommunication Commission; Food Runners Collaborative, Board of Directors (umbrella organization for Wake County Meals on Wheels and Interfaith Food Shuttle), President
Family	Wife Virginia Doughton Finley and sons Edward D. Finley (30) and Robert Wood Finley (28)

NORTH CAROLINA STATE ETHICS COMMISSION

2011 STATEMENT OF ECONOMIC INTEREST

919-715-2071 www.ethicscommission.nc.gov

FOR OFFICE USE ONLY
RECEIVED ON:

RECEIVED

APR 15 2011

STATE ETHICS COMMISSION

TE THIS FORM AND MAIL SIGNED, ORIGINAL TO
THICS COMMISSION, 1324 MAIL SERVICE CENTER, RALEIGH, NC 27699-1324

:MENT TYPE (SELECT ONE)

☑ NEW
☐ AMENDED

Deadline for filing Statement of Economic Interest
Newly Appointed/Employed: Generally prior to your appointment/employment
All Others: Generally April 15 of current year

2. FILER'S NAME (FIRST, MIDDLE, LAST)

First Name	Middle Name	Last Name	Suffix
Edward	S.	Finley	Jr.

3. MAILING ADDRESS, CITY, STATE, ZIP+4[1]

Address 1	Address 2	City	State	ZIP
2024 White Oak Road		Raleigh	NC	27608

4. EMPLOYER	5. TITLE OR POSITION SOUGHT
NC Dept. of Commerce / Utilities Commission	Chairman
6. DAYTIME PHONE NUMBER (10-digit number no spaces, no characters.)	**7. ALTERNATE PHONE NUMBER (10-digit number no spaces, no characters.)**
(919) 733-6067	(919) 733-0829
8. E-MAIL ADDRESS	**9. REASON FOR FILING (SELECT ALL THAT APPLY)**
finlev@ncuc.net	☑ STATE GOVERNMENT JOB ☑ BOARD/COMMISSION APPOINTMENT

_OYED BY (IF FILING BASED ON EMPLOYMENT)

Commerce, Department of

11. BOARD(S) SERVED - Select up to 11 Boards

Utilities Commission

Agency for Public Telecommunications and Geographic Information System

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

☐ No other household members.

Full Name[3]	Relationship	Occupation/Employer	Nature of Business
Virginia D. Finley	Wife	Homemaker	

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

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

: ay use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a (non-public) supplement form available from the Commission upon request.

The entire document and any attachments are public record.

I. $10,000 PLUS DISCLOSURES

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

- ▶ Do not list the value of those assets or liabilities.
- ▶ Do not list assets or liabilities held in a blind trust[1] established by or for the benefit of you or an immediate family member.

1. NORTH CAROLINA REAL ESTATE OWNED: Do you, your spouse, or members of your immediate family have an ownership interest in North Carolina real estate with a market value of $10,000 or more?

☑ Yes ☐ No If "Yes", please list below.

Owner of Real Estate	% Ownership Interest	Location by County and City
See Attached Schedule 1.		

2. NORTH CAROLINA REAL ESTATE RENTED: Do you, your spouse, or members of your immediate family rent North Carolina real estate with a market value of $10,000 or more to or from the State?

☐ Yes ☑ No If "Yes", please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City

3. PERSONAL PROPERTY OWNED: Within the preceding two years, have you, your spouse, or members of your immediate family sold or bought personal property with a market value of $10,000 or more to or from the State?

☐ Yes ☑ No If "Yes", please list below and identify the State agency involved in the purchase or sale.

Identity of Purchaser	Identity of Seller	Nature and Location of Property

4. PERSONAL PROPERTY RENTED: Do you, your spouse, or members of your immediate family rent personal property with a market value of $10,000 or more to or from the State?

☐ Yes ☑ No If "Yes", please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property

5(a). PUBLIC COMPANIES: Do you, your spouse, or members of your immediate family own interests (generally stock) in a publicly owned company valued at $10,000 or more?

☑ Yes ☐ No If "Yes", please list below.

- ▶ Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (I) the fund is publicly traded or its assets are widely diversified and (II) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.
- ▶ You may use three-letter ticker symbol to identify stocks.

Owner of Interest	Name of Company
See Attached Schedule 5.	

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

5(b). **OPTIONS:** Do you, your spouse, or members of your immediate family hold stock options in a publicly owned company valued at $10,000 or more?

☐ Yes ☑ No If "Yes", please list below.

Owner of Stock Option	Name of Company

6(a). **NON-PUBLIC COMPANIES:** Do you, your spouse, or members of your immediate family have financial interests valued at $10,000 or more in a non-publicly owned company or business entity (including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations)?

☑ Yes ☐ No If "Yes", please list below and complete 6(b) and 6(c).

Owner of Interest	Name of Business Entity
Edward S. Finley, Jr.	ESF Holdings LLC

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

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Security or Equity Interests
☐ None or Not Known	
See Attached Schedule 6(b).	

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

Identify Company or Business Entity	Nature of Business Relationship with the State
☑ None or Not Known	

7. **TRUSTS:** Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*?

☐ No If "Yes", please list below.

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

Name and Address of Trustee	Description of the Trust	Your Relationship to the Trust
Bank of America*	Successor trustee under Will of Doughton	Virginia D. Finley - Beneficiary
Edward S. Finley, Jr. (same as above) Ann Finley Reynolds	Edwards S. Finley, Sr. Irrevocable Trust	Donor/Beneficiary/Trustee
* The trustee, Bank of America, legally and substantively is in control, but the two beneficiaries are consulted.		

8. **LIABILITIES:** Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness (mortgage) on your primary personal residence?

☑ Yes ☐ No If "Yes", please list below. Examples include credit card debts, auto loans, and student loans.

Name of Debtor (You, Spouse, Immediate Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
FNC Mortgage Company (3)	Mortgage Company
Bank of America	Commercial Bank

II. OTHER DISCLOSURES

9. NONPROFIT INTERESTS: At any time during 2010, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes?

☑ Yes ☐ No If "Yes", provide the following information.

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

Identify Person and His/Her Position	Name of Nonprofit Corporation or Organization	Nature of Business or Purpose of Organization	Describe State Business or State Funding
Edward S. Finley, Jr.	Union Theological Seminary	Seminary	None
Virginia D. Finley	National Society of Colonial Dames of America	Historical Preservation Organization	None
	In the State of NC		
Edward S. Finley, Jr.	Glenaire Foundation	Continuing Care Retirement Community	None
Virginia D. Finley	Frankie Lemon School	Disabled School	Yes, but indirectly through Wake County

10. INCOME: List all sources of income (not amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2010. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, and business income. Do *not* include income received from the following sources:

- ▶Capital Gains
- ▶Federal government retirement
- ▶Military retirement
- ▶Social security income/SSDI

Recipient of Income	Name of Source	Business or Industry	Type of Income
☐ I had no reportable income over $5,000 in 2010.			
Edward S. Finley, Jr.	Utilities Commission See notes in Schedules 1 & 5	State	Salary

11. PRACTICING ATTORNEY: If you are a practicing attorney check each category of legal representation in which you or the law firm with which you are associated has earned legal fess of $10,000 or more during 2010:

☑ I am not a practicing attorney.

☐ Administrative	☐ Admiralty	☐ Corporate	☐ Criminal
☐ Decedent's Estates	☐ Environmental	☐ Insurance	☐ Labor
☐ Local Government	☐ Real Property	☐ Securities	☐ Tax
☐ Tort litigation (including negligence)		☐ Utilities Regulation	

12. LICENSED PROFESSIONAL: Are you (1) a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association and (2) did you charge or were you paid over $10,000 for those services during 2010?

☐ Yes ☑ No If yes, please provide the following information.

Type of Business	Nature of Services Rendered

13. **BUSINESS RELATIONSHIPS:** As of December 31, 2010, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with, your State board or employing entity?

☐ Yes ☑ No ☐ Legislator / Judicial Officer. If "Yes", provide the following information.

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

Identify Person	Identify Employer (if applicable)	Licensing, Business or Regulatory Relationship

14. **INTEREST IN AGENCY OR BOARD ISSUES:** As of December 31, 2010, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction?

☐ Yes ☑ No ☐ Legislator / Judicial Officer. If "Yes", provide the following information.

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

▶ Do not list organizations of which you are only a member (not in a leadership role).

Identify Person	Identify Name of Society, Organization or Advocacy Group	Leadership Position (Director, Officer, Board Member)

15. **FELONY CONVICTION:** Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction?

☐ Yes ☑ No If "Yes", please provide the following information.

Offense	Date of Conviction	County and State of Conviction

16. **RECEIPT OF GIFTS OUTSIDE OF NORTH CAROLINA:** During any calendar quarter in the preceding year (but only the time period after you were appointed, employed or filed or were nominated as a candidate), did you (1) receive any gift(s) exceeding $200 per quarter from a person or group of persons acting together, and (2) when both you and those person(s) were outside North Carolina at the time you accepted the gift(s), and (3) the gift(s) were given under circumstances that would lead a reasonable person to conclude that they were given for lobbying?

☐ Yes ☑ No If yes, please provide the following information.

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

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

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value

17. **ACCEPTANCE OF SCHOLARSHIP:** During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate) have you (1) accepted a "scholarship" exceeding $200 from a person or group of persons acting together and (2) those person(s) were outside North Carolina and (3) the scholarship was related to your public position? **A "scholarship" is a grant-in-aid to attend a conference, meeting, or similar event.**

☑ Yes ☐ No ☐ I am a Legislator / Judicial officer. If yes, please provide the following information.

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

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

▶ Legislators are not required to report scholarships paid by a nonpartisan legislative organization of which the legislator or the General Assembly is a member or participant or an affiliate of that organization.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value
	See Attached Schedule 17.		

18. **LOBBYIST:** Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or were you registered as such during 2010?

☐ Yes ☑ No If "Yes", please provide the following information.

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

19(a). **BUSINESS ASSOCIATIONS:** List the name of each business with which you are associated (sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations, publicly-held or privately-held) where you or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager.

☑ No Business Associations

Identify Person	Relationship to Filer	Company	Role of Person

19(b). **COMPANY OR BUSINESS DEALINGS WITH STATE:** If you know that any company or business entity listed in 19(a) above has any material business dealings or business contracts with the State, or is regulated by the State, provide a brief description of that business activity or relationship.

Identify Company or Business Entity	Nature of Business Relationship with the State
☑ Not applicable (No entities listed on #19a) ☐ No relationship / Not known	

20(a). **APPOINTMENT TO BOARDS COVERED BY STATE GOVERNMENT ETHICS ACT, CHAPTER 138A OF THE GENERAL STATUTES:** Did a Council of State member appoint you to or recommend you for appointment to a board covered by the Ethics Act? The Council of State members are: Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance.

☑ Yes ☐ No If "Yes", proceed to question **20(b)**. If "No", proceed to question **21**.

20(b). **CAMPAIGN CONTRIBUTIONS:** In the preceding calendar year did you (not immediate family members) make contributions with a cumulative total of more than $1,000 to the Council of State member (see list above) who appointed you? Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."

☐ Yes ☑ No If "Yes", list all such contributions. If "No", proceed to question **21**.

Date	Amount	Contributed to

21. **CAMPAIGN ACTIVITIES:** Are you now, or are you a prospect to be:	
a. the head of a principal state department (e.g. cabinet secretary) appointed by the Governor; or b. [illegible]h Carolina Supreme Court Justice; Court of Appeals, Superior or District Court Judge; or c. [illegible]ber of any of the following boards: • ABC Commission • Coastal Resources Commission • State Board of Education • State Board of Elections • Employment Security Commission • Environmental Management Commission • Industrial Commission • State Personnel Commission • Rules Review Commission • Board of Transportation • UNC Board of Governors • Utilities Commission • Wildlife Resources Commission	☑ Yes ☐ No **If "No", proceed to question 22.**
d. If so, were you appointed to, or are you being considered for, appointment to your public position by a Council of State Member (Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance)?	☑ Yes ☐ No **If "No", proceed to question 22.**
e. If so, you must indicate whether during the preceding calendar year you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position: i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."	☐ Yes ☑ No
[illegible]Hosted a fundraiser at your residence or place of business?	☐ Yes ☑ No
iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?	☐ Yes ☑ No

22. **OTHER INFORMATION:** Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act?

☐ Yes ☑ No If "Yes", please provide that information.

The entire document and any attachments are public record.

Please ensure that you have responded to all questions and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, you will be provided with a supplement to complete, sign and return. Your SEI is not deemed "filed" until complete answers are submitted for every question.

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

AFFIRMATION

I swear or affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto are public record.

I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

☑ **I Agree**

Edward S. Finley, Jr.

PRINTED NAME

** Notarization is no longer required. **

Edward S. Finley, Jr.

SIGNATURE

4-15-11

DATE

Submit SIGNED, ORIGINAL documents.

SCHEDULE OF ECONOMIC INTEREST
Edward S. Finley, Jr.
SCHEDULE 1

	Owner of Real Estate	% Ownership Interest	Location by City and County
	Edward S. Finley, Jr. / Virginia D. Finley	100%	2024 White Oak Rd, Raleigh / Wake
*	Edward S. Finley, Jr.	100%	710 Kimbrough, Raleigh / Wake
*	Edward S. Finley, Jr.	100%	810 Mills, Raleigh / Wake
*	Edward S. Finley, Jr.	100%	1518 Hanover, Raleigh / Wake
*	Virginia D. Finley	100%	724 Kimbrough, Raleigh / Wake
*	Virginia D. Finley	100%	2705 – 2702 Kilgore, Raleigh / Wake
*	Virginia D. Finley	100%	427 Morrison, Raleigh / Wake
*	Virginia D. Finley	100%	4509 Keswick, Raleigh / Wake
*	Virginia D. Finley	100%	Fork Farm Property, Raleigh / Wake
	Virginia D. Finley	25%	Wilson-Tarboro St., Wilson / Wilson
	Edward S. Finley, Jr. / Virginia D. Finley	100%	Laurel Springs Land, Wilkes / Allegheny
*	Virginia D. Finley	50%	Doughton Mtn. Land, Allegheny
	Edward S. Finley, Jr. / Virginia D. Finley	100%	Airport property, Wake
*	Virginia D. Finley	50%	U.S. Post Office, Laurel Springs, Allegheny
	Virginia D. Finley	50%	Roaring Gap Lot, Allegheny

Note: Properties identified by * are those with rental income in excess of $5,000 for purposes of responding to question 10 on page 4 of 8.

SCHEDULE OF ECONOMIC INTEREST
Edward S. Finley, Jr.
SCHEDULE 5

Owner of Securities	Name of Company
Edward S. Finley, Jr.	Allstate Corp.
Edward S. Finley, Jr.	Bank of American Corp.
Edward S. Finley, Jr.	Belk Inc.
Edward S. Finley, Jr.	BB&T Corp.
Edward S. Finley, Jr.	British Petroleum
Edward S. Finley, Jr.	Caterpillar
Edward S. Finley, Jr.	Chevron Corp.
Edward S. Finley, Jr.	Diageo pic. AD
Edward S. Finley, Jr.	Dow Chemical
Edward S. Finley, Jr.	DuPont (E.I.)
Edward S. Finley, Jr.	General Electric
Edward S. Finley, Jr.	Highwood Properties
Edward S. Finley, Jr.	Hewlett-Packard
Edward S. Finley, Jr.	International Business Machines
Edward S. Finley, Jr.	Intel Corp.
Edward S. Finley, Jr.	International Paper
Edward S. Finley, Jr.	Kraft Foods
Edward S. Finley, Jr.	Lilly (Eli)
* Edward S. Finley, Jr.	Lowes Cos.
Edward S. Finley, Jr.	3M Co.
Edward S. Finley, Jr.	Altria Group
Edward S. Finley, Jr.	Merck & Co.
Edward S. Finley, Jr.	Microsoft
Edward S. Finley, Jr.	PepsiCo. Inc.
Edward S. Finley, Jr.	Proctor & Gamble
Edward S. Finley, Jr.	Phillip Morris
Edward S. Finley, Jr.	Reynolds International
Edward S. Finley, Jr.	Ralcorp Holding
Edward S. Finley, Jr.	Spectra Energy
Edward S. Finley, Jr.	Union Pacific
* Edward S. Finley, Jr.	Exxon Mobil Corp.
Edward S. Finley, Jr.	Remote Light
* Virginia D. Finley	Belk Inc.
Virginia D. Finley	Wells Fargo

Note: Stocks identified by * are those with dividends in excess of $5,000 for purposes of responding to question 10 on page 4 of 8.

SCHEDULE OF ECONOMIC INTEREST
Edward S. Finley, Jr.
SCHEDULE 6(b)

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
ESF Holdings LLC	Bristol Myers Squibb
	Chevron
	Coca Cola
	Exxon
	General Electric
	J P Morgan Chase
	Lincoln National Corp.
	Lowes
	Sun Trust
	Wells Fargo

SCHEDULE OF ECONOMIC INTEREST
Edward S. Finley, Jr.
SCHEDULE 17

Date of Scholarship	Name & Address of Donor(s)	Describe Event	Estimated Market Value
March 25-26, 2010	National Association of Regulatory Utility Commissioners 1101 Vermont Avenue, N.W., Suite 200 Washington, DC 20005	Eastern Interconnection States Planning Council (EISPC) kickoff meeting (participated as state representative)	$600.75
April 7-9, 2010	Organization of PJM States, Inc. (OPSI) 249 E Main St Bldg 2 Ste 1 Newark, DE 19711	OPSI Spring Meeting (participated as OPSI Board Member)	$399.30
August 26-27, 2010	National Association of Regulatory Utility Commissioners 1101 Vermont Avenue, N.W., Suite 200 Washington, DC 20005	Eastern Interconnection States Planning Council (EISPC) kickoff meeting (participated as state representative)	$650.16
September 23-24, 2010	The University of Georgia, Terry College of Business Bank of America Bldg 110 E. Clayton St., Suite 602 Athens, GA 30602	30th Annual Bonbright Electric and Natural Gas Conference (participated as invited speaker)	$535.75
October 3-5, 2010	Emerging Issues Policy Forum, Inc. P.O. Box 1825 Windermere, FL 34786	8th Annual Emerging Issues Policy Form (participated as an invited participant)	$312.31
October 5-8, 2010	Organization of PJM States, Inc. (OPSI) 249 E Main St Bldg 2 Ste 1 Newark, DE 19711	OPSI Spring Meeting (participated as OPSI Board Member)	$612.75

SCHEDULE OF ECONOMIC INTEREST
Edward S. Finley, Jr.
SCHEDULE 17

Date of Scholarship	Name & Address of Donor(s)	Describe Event	Estimated Market Value
October 28, 2010	American Conference Institute 1329 Bay Street Toronto, Ontario M5R 2C4	3rd Annual Nuclear Power Congress (participated as an invited speaker)	$327.40
December 6-7, 2010	Electric Utility Consultants, Inc. 5555 Preserve Drive Greenwood Village, CO 80121	Demand Response Conference (participated as an invited speaker)	$394.97

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 438
PROPOSED COMMITTEE SUBSTITUTE S438-CSSU-16 [v.3]

6/1/2011 9:11:10 PM

Short Title: Clarify Motor Vehicle Licensing Law. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-288(a1) reads as rewritten:

"(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

(1) The required fee.

(2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) ~~and operates from an established showroom one mile or less from the established showroom for which the applicant seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision~~.

(3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.

(4) The application for a dealer license plate."

SECTION 2. G.S. 20-288 is amended by adding a new subsection to read:

"(b1) The Division shall require in such license application and each application for renewal of license a certification that the applicant is familiar with the North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law and with other North Carolina laws governing the conduct and operation of the business for which the license or license renewal is sought and that the applicant shall comply with the provisions of these laws, with the

provisions of Article 12 of Chapter 20 of the General Statues of North Carolina, and with other lawful regulations of the Division."

SECTION 3. G.S. 20-301 is amended by adding a new subsection to read:

"(g) Notwithstanding any other statute, regulation or rule, or the existence of a pending legal or administrative proceeding in any other forum, any franchised new motor vehicle dealer or any manufacturer, factory branch, distributor, or distributor branch may elect to file a petition before the Commissioner for resolution of any dispute that may arise with respect to any of the rights or obligations of the dealer or of the manufacturer, factory branch, distributor, or distributor branch related to a franchise or franchise-related form agreement. The Commissioner shall have the authority to apply principles of law, equity, and good faith in determining such matters. The filing of a petition by a dealer or a manufacturer, factory branch, distributor, or distributor branch pursuant to this section shall not preclude the party filing the petition from pursuing any other form of recourse it may have, either before the Commissioner or in another form, including any damages and injunctive relief. The Commissioner shall have the authority to receive and evaluate the facts in the matter of controversy and render a decision by entering an order which shall thereafter become binding and enforceable with respect to the parties, subject to the right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statues."

SECTION 4. G.S. 20-301.1(a) reads as rewritten:

"(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, or other charges or amounts which total more than five thousand dollars ($5,000.00), other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, the prior written notice ~~is~~ required ~~for~~ pursuant to this subsection includes, but is not limited to, all charges or debits to a dealer's account for ~~the following charges or debits:~~ advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the ~~dealer.~~ dealer; and any other charges or amounts which total more than five thousand dollars ($5,000.00). If the franchised new motor vehicle dealer disputes all or any portion of an actual or proposed charge or debit to the dealer's account, the dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge had been rendered by the Commissioner or court."

SECTION 5. G.S. 20-305(4) reads as rewritten:

"(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, change in use of an existing facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in

writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, or the use of an existing facility changed, unless the franchisor has been given at least 30 days' prior written notice as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation or change in use of a dealership facility. The franchisor shall send the dealership and the proposed transferee notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. The notice of objection shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment, relocation, or change that is specifically referenced in this subdivision. An objection to a proposed transfer, sale, assignment, relocation, or change in the executive management or principal operator of the ~~dealership~~ dealership, or change in the use of the facility may only be premised upon the factual and legal bases specifically referenced in this ~~subdivision.~~subdivision or G.S. 20-305(11) as it relates to change in the use of a facility. A manufacturer's notice of objection which is based upon factual or legal issues that are not specifically referenced in this subdivision or G.S. 20-305(11) with respect to a change in the use of an existing facility as being issues upon which the Commissioner shall base his determination shall not be effective to preserve the franchisor's right to object to the proposed transfer sale, assignment, relocation, or change, provided the dealership or proposed transferee has submitted written notice, as required above, as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in the executive management or as principal operators, and the location and site plans of any proposed ~~relocation.~~relocation or change in the use of an existing facility. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. If the franchisor requires additional information to complete its review, the franchisor shall notify the dealership within 15 days after receipt of the proposed transferee's name and address, financial ability, and qualifications, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation or change in use of the dealership facility. If the franchisor fails to request additional information from the dealer or proposed transferee within 15 days of receipt of this initial information, the 30-day time period within which the franchisor may provide notice of objection shall be deemed to run from the initial receipt date. Otherwise, the

30-day time period within which the franchisor may provide notice of objection shall run from the date the franchisor has received the supplemental information requested from the dealer or proposed transferee; provided, however, that failure by the franchisor to send notice of objection within 60 days of the franchisor's receipt of the initial information from the dealer shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. With respect to a proposed change in use of a dealership facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, the sole issue for determination by the Commissioner is whether the new motor vehicle dealer has a reasonable line of credit for each make or line of motor vehicle and remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer or distributor. The reasonable facilities requirements of the manufacturer or distributor shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof

before the Commissioner under this subdivision. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. The opinion or determination of a franchisor that the continued existence of one of its franchised dealers situated in this State is not viable, or that the dealer holds or fails to hold licensing rights for the sale of other line-makes of vehicles in a manner consistent with the franchisor's existing or future distribution or marketing plans, shall not constitute a lawful basis for the franchisor to fail or refuse to approve a dealer's proposed change in use of a dealership facility or relocation: provided, however, that nothing contained in this subdivision shall be deemed to prevent or prohibit a franchisor from failing to approve a dealer's proposed relocation on grounds that the specific site or facility proposed by the dealer is otherwise unreasonable under the circumstances. Approval of a relocation pursuant to this subdivision shall not in itself constitute the franchisor's representation or assurance of the dealer's viability at that location."

SECTION 6. G.S. 20-305(6)d.3. reads as rewritten:

"3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day ~~12 months~~ 18 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due not later than 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, the new motor vehicle dealer specifying the elements of compensation requested by the dealer. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer."

SECTION 7. G.S. 20-305(14) reads as rewritten:

"(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's market area as

determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. ~~Except~~ Additionally, except as may be required by any consent decree of the Commissioner or other order of the Commissioner or court of competent jurisdiction, ~~each~~ any sales objectives which a manufacturer, factory branch, distributor, and distributor branch ~~shall~~ establishes for any of its franchised dealers in this State must be reasonable, and every manufacturer, factory branch, distributor, and distributor branch must allocate its products within this State in a manner ~~that provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model to achieve the manufacturer's minimum sales requirements, planning volume, or sales objectives and that is fair and equitable to all of its franchised dealers in this State. Additionally, each manufacturer shall make available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer advertises nationally as being available for purchase. A manufacturer shall not unfairly discriminate among its franchised dealers in this allocation process.~~ that does all of the following:

a. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.

b. Allocates an adequate supply of vehicles to each dealer by series, product line, and model for the dealer to achieve the performance standards established by the manufacturer and distributor.

c. Is fair and equitable to all of its franchised dealers in this State.

d. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.

e. Does not unfairly discriminate among its franchised dealers in its allocation process.

This subsection is not violated, however, if such failure is caused solely by ~~acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative~~ the occurrence of temporary international, national, or regional product shortages resulting from natural disasters, unavailability of parts, labor strikes, product recalls, and other factors and events beyond the control of the manufacturer that temporarily reduce a manufacturer's product supply. The willful or malicious maintenance, creation, or alteration of a vehicle allocation process or formula by a

manufacturer, factory branch, distributor, or distributor branch that is in any part designed or intended to force or coerce a dealer in this State to close or sell the dealer's franchise, cause the dealer financial distress, or to relocate, update, or renovate the dealer's existing dealership facility, shall constitute an unfair and deceptive trade practice under G.S. 75-1.1.

SECTION 8. G.S. 20-305(39) reads as rewritten:

"(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to ~~purchase or lease~~ purchase, lease, erect, or relocate one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 9. G.S. 20-305 is amended by adding two new subdivisions to read:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(43) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, if the dealer has changed the location of the dealership or made substantial alterations to the dealership premises or facilities within the preceding seven years at a cost of more than five hundred thousand dollars ($500,000) and the change in location or alteration was made at the written request of the manufacturer, factory branch, distributor, or distributor branch. This subdivision (43) shall not apply to improvements required by the manufacturer which are solely necessary to conform to applicable laws and regulations for safety or health reasons, or to accommodate the reasonable and necessary sales and service requirements based on the technology of a motor vehicle offered for sale by the dealer.

(44) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to change the principal operator, general manager, or any other manager or supervisor employed by the dealer. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument that is inconsistent with this subdivision shall be deemed null and void and without force and effect."

SECTION 10. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty

service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the dealer's market offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or distributor may compare the dealer's rate for parts and labor with the practices of other franchised dealers who are selling competing line-makes of vehicles within the dealer's market. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is fair and reasonable pursuant to the provisions of this subsection.

(a2) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;

(2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance repairs;

(3) Engine assemblies and transmission assemblies;

(4) Routine maintenance not covered under warranty, such as fluids, filters, and belts not provided in the course of repairs;

(5) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

(6) Tires; and

(7) Vehicle reconditioning.

(a3) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

(a4) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

...

(h) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised new motor vehicle dealer the right to return any part or accessory that the dealer has not sold after 15 months where the part or accessory was not obtained through a specific order initiated by the franchised new motor vehicle dealer but instead was specified for, sold to, and shipped to the dealer pursuant to an automated ordering system, provided that such part or accessory is in the condition required for return to the manufacturer, factory branch, distributor, or distributor branch and the dealer returns the part within 60 days of it becoming eligible under this subsection. For purposes of this subsection, an "automated ordering system" shall be a computerized system required by the manufacturer that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory being returned under this subsection."

SECTION 11. G.S. 20-305.7 reads as rewritten:

"**§ 20-305.7. Protecting dealership data and consent to access dealership information.**

(a) Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or distributor branch shall require a new motor vehicle dealer to provide its customer lists, customer information, consumer contact information, transaction data, or service files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that a new motor vehicle dealer provide its customer lists, customer information, consumer contact information, transaction data, or service files as a condition to the dealer's participation in any incentive program or contest for a customer or dealer to receive any incentive payments otherwise earned under an incentive program or contest, for the dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services for which the dealer would otherwise be entitled to obtain under the franchise or any other contract or agreement, or which shall customarily be provided to dealers, shall be voidable at the option of the dealer, unless all of the following conditions are satisfied: (i) the customer information requested relates solely to the specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require that the dealer provide general customer information or other information related to the dealer; (ii) such requirement is lawful and would also not require the dealer to allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, §1608 *et seq.*; and (iii) the dealer is not required to allow the manufacturer or distributor or any third party to have direct access to the dealer's computer system, but the dealer is instead permitted to provide the same dealer, consumer, or customer data or information specified by the manufacturer or distributor by timely obtaining and pushing or otherwise furnishing the required data in a widely accepted file format such as comma delimited in accordance with subsection (h) of this section. Nothing contained in this section shall limit the ability of the manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide or to use in

accordance with the law such customer information related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the following:

(1) Satisfy any safety or recall notice obligations.

(2) Complete the sale and delivery of a new motor vehicle to a customer.

(3) Validate and pay customer or dealer incentives.

(4) Submit to the manufacturer, factory branch, distributor, or distributor branch claims for any services supplied by the dealer for any claim for warranty parts or repairs.

At the request of a manufacturer or distributor or of a third party acting on behalf of a manufacturer or distributor, a dealer may only be required to provide customer information related solely to such manufacturer's or distributor's own vehicle makes for reasonable marketing purposes, market research, consumer surveys, market analysis, and dealership performance analysis, but the dealer is only required to provide such customer information to the extent lawfully permissible; to the extent the requested information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require the dealer to provide general customer information or other information related to the dealer; and to the extent the requested information can be provided without requiring that the dealer allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, §6801 *et seq.*

No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(b) No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor may access or utilize customer or prospect information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State for purposes of soliciting any such customer or prospect on behalf of, or directing such customer or prospect to, any other dealer. The limitations in this subsection do not apply to:

(1) A customer that requests a reference to another dealership;

(2) A customer that moves more than 60 miles away from the dealer whose data was accessed;

(3) Customer or prospect information that was provided to the dealer by the manufacturer, factory branch, distributor, or distributor branch; or

(4) Customer or prospect information obtained by the manufacturer, factory branch, distributor, or distributor branch where the dealer agrees to allow the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of

any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor the right to access and utilize the customer or prospect information maintained in the dealer's dealer management computer system for purposes of soliciting any customer or prospect of the dealer on behalf of, or directing such customer or prospect to, any other dealer in a separate, stand-alone written instrument dedicated solely to such authorization.

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide such access. Prior to obtaining said consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall provide to the dealer a written list of all specific third parties to whom any ~~North Carolina dealer management computer system~~ data obtained from the dealer has actually been provided within the 12-month period ending November 1 of the prior year. The list shall further describe the scope and specific fields of the data provided. In addition to the initial list, a dealer management computer system vendor or any third party acting on behalf of, or through a dealer management computer system vendor shall provide to the dealer an annual list of third parties to whom said data is actually being provided on November 1 of each year and to whom said data has actually been provided in the preceding 12 months and describe the scope and specific fields of the data provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any such person's obligations to comply with the terms of this section and any additional State or federal laws (and any rules or regulations promulgated thereunder) applicable to them with respect to such access. In addition, no dealer management computer system vendor may refuse to provide a dealer management computer system to a motor vehicle dealer located in this State if the dealer refuses to provide any consent under this ~~subsection, except to the extent that consent is deemed by the parties to be reasonably necessary in order for the vendor to provide the system to the dealer.~~subsection.

...

(f) The following definitions apply to this section:

(1) "Dealer management computer system" – A computer hardware and software ~~system having dealer business process management modules that provide real time~~ system that is owned or leased by the dealer, including a dealer's use of Web applications, software, or hardware, whether located at the dealership or provided at a remote location and that provides access to customer records and transactions by a motor vehicle dealer located in this State and that ~~allow~~ allows such motor vehicle dealer timely information in order to sell vehicles, parts or services through such motor vehicle dealership.

(2) "Dealer management computer system vendor" – A seller or reseller of dealer management computer systems (but only to the extent that such person is engaged in such activities).

(3) "Security breach" – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer ~~information~~information, or any incident of disclosure of dealership customer information to one or more third parties which shall not have been specifically authorized by the dealer or customer, shall constitute a security breach.

...

(h) Notwithstanding any of the terms or provisions contained in this section or in any consent, authorization, release, novation, franchise, or other contract or agreement, whenever any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or information through direct access to a dealer's computer system, the dealer is not required to provide, and may not be required to consent to provide in any written agreement, such direct access to its computer system. The dealer may instead provide the same dealer, consumer, or customer data or information specified by the requesting party by timely obtaining and pushing or otherwise furnishing the requested data to the requesting party in a widely accepted file format such as comma delimited; provided that, when a dealer would otherwise be required to provide direct access to its computer system under the terms of a consent, authorization, release, novation, franchise, or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial set-up fee and a reasonable processing fee based on the actual incremental costs incurred by the party requesting the data for establishing and implementing the process for the dealer. Any term or provision contained in any consent, authorization, release, novation, franchise, or other contract or agreement which is inconsistent with any term or provision contained in this subsection shall be voidable at the option of the dealer.

(i) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such consumer or customer data or other information from all damages, costs, and expenses incurred by such dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, and attorneys' fees arising out of complaints, claims, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by the access, storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or customer data or other information by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of or through such

manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor."

SECTION 12. The terms and provisions of this act shall be applicable to all current and future franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act.

SECTION 13. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 14. Section 6 of this act becomes effective January 1, 2014. The remainder of the act is effective when it becomes law.

SENATE BILL 438:
Clarify Motor Vehicle Licensing Law

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2011
Introduced by:	Sen. Apodaca	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S438-CSSU-16		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 438 makes changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law.***

BILL ANALYSIS:

Section 1 of the PCS amends the provision requiring a licensing course for those applying for a used motor vehicle dealer license. Current law does not require the course for applicants who are licensed as new motor vehicle dealers if certain conditions are met. This section eliminates the conditions and exempts the applicant from the course if he or she is licensed as a new motor vehicle dealer.

Section 2 requires an applicant for a license under the dealers and manufacturers law to submit a certification that the applicant is familiar, and intends to comply, with the licensing law and other North Carolina laws governing the conduct and operation of the business for which the license is sought.

Section 3 authorizes any party to a franchise agreement (dealer, manufacturer, factory branch, distributor, distributor branch) to file a petition before the Commissioner of Motor Vehicles for resolution of a dispute related to the franchise or franchise-related form agreement. This does not preclude any other form of recourse, and decisions are reviewable pursuant to Chapter 150B.

Section 4 amends G.S. 20-301.1, which requires written notice to a dealer before the manufacturer charges the dealer's account for certain merchandise, tools, or equipment. This section requires notice for any charges totaling more than $5,000. If the dealer disputes the charges, no payment would be required unless and until a final judgment is rendered.

Section 5 amends G.S. 20-305(4), which provides for notice by a dealer of proposed transfer, sale, assignment, relocation, etc. of a dealership and opportunity for the manufacturer to object. This section specifies that the provision also applies to a dealer's proposed change in use of an existing facility to provide for the sales or service of additional line-makes of new motor vehicles.

Section 6 amends a provision regarding payment of fair market value for a franchise upon termination, cancellation, or nonrenewal. Current law bases the amount on the value of the franchise on the day 12 months prior to the notice of termination. This section would change the "look back" date to the day 18 months prior to the notice of termination.

Section 7 expands the current statutory provision requiring manufacturers to allocate vehicles to franchised dealers fairly and equitably. This section would require the manufacturer to consider each dealer's historical selling patterns, and would prohibit the willful or malicious use of a vehicle allocation process to force a dealer to close, sell, relocate, or renovate a franchise, or to cause the dealer financial distress.

Section 8 amends a provision prohibiting a manufacturer from coercing a dealer to purchase or lease signs upon unreasonable or onerous conditions to also prohibit a manufacturer from coercing a dealer to erect or relocate signs.

Section 9 prohibits manufacturers from requiring or coercing a dealer to alter or relocate a dealership if the dealer has made substantial alterations or relocated at a cost of more than $500,000 within the previous 7 years at the request of the manufacturer. This section also prohibits the manufacturer from requiring or coercing a dealer to change the principal operator, general manager, or any other manager or supervisor employed by the dealer.

Section 10 amends existing law regarding compensation paid by manufacturers to dealers for parts, work, and service in connection with warranty service. This section provides for an optional rate calculation based on actual retail invoices submitted by the dealer. The section also prohibits a manufacturer from denying a dealer the right to return unsold parts and accessories if they were not specifically ordered by the dealer and have not been sold after 15 months.

Section 11 strengthens existing provisions that protect customer data maintained by dealers. Manufacturers would be prohibited from requesting the data except under limited circumstances.

Section 12 makes the act applicable to all current and future franchises and existing agreements between new motor vehicle dealers and manufacturers.

Section 13 is a severability clause that provides that if any part of the act is found to be invalid, the remaining provisions are still in effect.

EFFECTIVE DATE: Section 6 of the act is effective January 1, 2014. The remainder of the act is effective when it becomes law.

S438-SMSU-36(CSSU-16) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 745*
PROPOSED COMMITTEE SUBSTITUTE S745-CSMA-25 [v.1]

6/1/2011 3:53:37 PM

Short Title: Beer Franchise Law Clarifications. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE THREE-TIER DISTRIBUTION SYSTEM FOR MALT BEVERAGES IN NORTH CAROLINA BY CLARIFYING PROVISIONS OF THE BEER FRANCHISE LAW TO PROVIDE: A FRANCHISE AGREEMENT APPLIES TO ALL SUPPLIER PRODUCTS UNDER THE SAME BRAND NAME; A WHOLESALER MUST SELL MALT BEVERAGES TO ALL RETAILERS IN ITS TERRITORY AT THE SAME PRICE AT THE TIME OF DELIVERY; PROHIBITED ACTS OF SUPPLIERS WITH RESPECT TO THEIR DEALINGS WITH WHOLESALERS; GOOD CAUSE FOR TERMINATION MAY NOT BE MODIFIED BY AN AGREEMENT THAT DEFINES GOOD CAUSE IN A MANNER DIFFERENT THAN PROVIDED BY STATE LAW; REVERSION OF SMALL BREWERIES' SELF DISTRIBUTION RIGHTS UNDER CERTAIN CIRCUMSTANCES; CERTAIN ACTS THAT DO NOT AMOUNT TO GOOD CAUSE FOR TERMINATION OF A FRANCHISE; REMEDIES FOR A SUPPLIER'S WRONGFUL TERMINATION OF A FRANCHISE; INCLUSION OF A WHOLESALER MERGER, THE FACTORS THAT MAY BE CONSIDERED BY THE SUPPLIER IN APPROVING A MERGER OR TRANSFER, AND REMEDIES FOR UNLAWFUL REFUSAL TO APPROVE A MERGER OR TRANSFER; THE BEER FRANCHISE LAW MAY NOT BE WAIVED BY AN AGREEMENT CONTRARY TO STATE LAW; AND MEDIATION OF DISPUTES ARISING UNDER THE BEER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 18B of the General Statutes reads as rewritten:

"Article 13.

"Beer Franchise Law.

...

"**§ 18B-1303. Filing of distribution agreement; no discrimination.**

(a) Filing. – It is unlawful for a supplier to provide malt beverages to a wholesaler unless the Commission has received notification from the supplier designating the brands of the supplier which the wholesaler is authorized to sell and the territory in which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. A franchise agreement applies to all supplier products under the same brand name and different categories of products manufactured under a common identifying trade name are considered to be the same brand. No supplier may provide by a distribution agreement for the distribution of

a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute any brand of malt beverage to a retailer whose premises are located outside the territory specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however, with the approval of the Commission distribute malt beverages outside ~~his~~its designated territory during periods of temporary service interruption when requested to do so by the supplier and the wholesaler whose service is interrupted.

(b) No Discrimination. – A wholesaler shall ~~service~~sell malt beverages to all retail permit holders within ~~his~~its designated territory without discrimination with respect to the sale price at the time of delivery and shall make a good faith effort to make available to each retail permit holder in the territory each brand of malt beverage which the wholesaler has been authorized to distribute in that area.

(c) No Price Maintenance. – A franchise agreement shall not, either expressly or by implication or in its operation, establish or maintain the resale price of any brand of malt beverages by a wholesaler.

"**§ 18B-1304. Prohibitions.**

It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

(1) Coerce or attempt to coerce or persuade a wholesaler to violate any provision of the ABC laws or rules of the Department of ~~Revenue; or~~Revenue.

(2) ~~Alter~~ Except as authorized by 18B-1305(a1), alter in a material way, terminate, fail to renew, or cause a wholesaler to resign from, a franchise agreement with a wholesaler except for good cause and with the notice required by G.S. 18B-1305.

(3) Withdraw money from or otherwise access a wholesaler's bank accounts without the wholesaler's consent.

(4) Present a franchise agreement, amendment, or renewal to a wholesaler that attempts to waive compliance with any provision of this Article or that requires a wholesaler to waive compliance with any provision of this Article. A wholesaler entering into a franchise agreement containing provisions in conflict with this Article shall not be deemed to waive rights protected by, or in compliance with, any provision of this Article.

(5) Induce or coerce, or attempt to induce or coerce, any wholesaler to assent to any franchise agreement, amendment, or renewal that does not comply with this Article and the laws of this State.

(6) Coerce or attempt to coerce a wholesaler, or its designated or anticipated successor, to sign a franchise agreement, amendment, or renewal to a franchise agreement by threatening to refuse to approve or delay issuing an approval for the sale, transfer, or merger of a wholesaler's business.

(7) Terminate, cancel, or nonrenew or attempt to terminate, cancel, or nonrenew a franchise agreement on the basis that the wholesaler fails to agree or consent to an amendment to the franchise agreement.

(8) Prohibit a wholesaler from distributing the product of any other supplier, except that a supplier may prohibit a wholesaler from distributing the product of another supplier if reasonable grounds exist for prohibiting the wholesaler's acquisition of the product and the acquisition would result in the wholesaler acquiring 80% or more by volume of all malt beverage products sold in the territory being acquired at the time of the acquisition.

(9) Refuse to approve or require a wholesaler to terminate a brand manager or successor manager without good cause. A supplier has good cause only if

the person designated for approval by the wholesaler fails to meet reasonable standards and qualifications.

(10) Discriminate in price, allowance, rebate, refund, commission, discount, or service between wholesalers licensed in North Carolina. As used in this subsection, "discriminate" means the granting of a more favorable price, allowance, rebate, refund, commission, discount, or service to one North Carolina wholesaler than to another North Carolina wholesaler.

"§ 18B-1305. Cause for termination of franchise agreement.

(a) Meaning of Good Cause. – Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. The meaning of good cause set out in this section may not be modified or superseded by provisions in a written franchise agreement prepared by a supplier if those provisions purport to define good cause in a manner different than specified in this section. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own malt beverage products pursuant to G.S. 18B-1104(7) shall revert back to the brewery, in the absence of good cause, if the brewery pays the wholesaler fair market value for the distribution rights for each affected brand. For purposes of this subsection, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after each party has been provided all information relevant to the transaction. No brewery's authorization to self-distribute shall revert back to the brewery until the brewery and the wholesaler have agreed in writing on the fair market value for the distribution rights for each affected brand and the wholesaler has received compensation from the brewery for the value of the distribution rights.

(b) Notice of Cause. – At least 90 days before altering, terminating or failing to renew a franchise agreement for good cause, the supplier must give the wholesaler written notice of the intended action and the specific reasons for it. If the cause for the alteration, termination or failure to renew is subject to correction by the wholesaler, and the wholesaler makes such correction within 45 days of receipt of the notice, the notice shall be void.

(c) Termination for Cause without Advance Notice. – A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:

(1) Insolvency of the wholesaler, the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.

(2) Revocation of the wholesaler's State or federal permit or license for more than 30 days.

(3) Conviction of the wholesaler, or of a partner or individual who owns ten percent (10%) or more of the partnership or stock of the wholesaler, of a felony which might reasonably be expected to adversely affect the goodwill or interest of the wholesaler or supplier. The provisions of this subdivision shall not apply, however, if the wholesaler or its existing partners or stockholders shall have the right to purchase the interest of the offending

partner or stockholder, and such purchase is completed within ~~15~~30 days of the conviction.

(4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its products.

(5) Failure of the wholesaler to pay for the supplier's products according to the established terms of the supplier.

(6) Assignment, sale or transfer of the wholesaler's business or control of the wholesaler without the written consent of the supplier, except as provided in G.S. 18B-1307.

(d) Absence of Good Cause. – Good cause for alteration, termination or failure to renew a franchise agreement does not include:

(1) The failure or refusal of the wholesaler to engage in any trade practice, conduct or activity which would violate federal or State law.

(2) The failure or refusal of the wholesaler to take any action which would be contrary to the provisions of this Article.

(3) A change in the ownership of the supplier or the acquisition by another supplier of the brewery, brand or trade name or trademark, or acquisition of the right to distribute a product, from the original supplier.

(4) Sale or transfer of the rights to manufacture, distribute, or use the trade name of the brand to a successor supplier.

(5) Failure of the wholesaler to meet standards of operation or performance which have been imposed or revised unilaterally by the supplier without a fair opportunity for the individual wholesaler to bargain as to the terms.

(6) The establishment of a franchise agreement between a wholesaler and another supplier, or similar acquisition by a wholesaler of the right to distribute a brand of another supplier.

(7) The desire of a supplier to consolidate its franchises.

"§ 18B-1306. Remedies for wrongful termination.

(a) Injunctive Relief. – A wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article may bring an action to enjoin such unlawful alteration, termination or failure to renew. The action may be brought in the county in which the wholesaler has its principal place of business or in any county in which the wholesaler receives or distributes the products in issue. Any injunction issued pursuant to this subsection shall require the wholesaler to supply the customers in its territory with their reasonable retail requirements and to otherwise serve the territory.

(b) Monetary Damages. – In ~~lieu of~~ addition to injunctive relief, a wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article shall be entitled to recover monetary damages from the supplier. ~~The amount to which the wholesaler is entitled shall be the value of the wholesaler's business distributing the supplier's products, including:~~ If the wholesaler retains its franchise rights through injunctive relief, the monetary damages to which the wholesaler is entitled shall include the losses suffered by the wholesaler from disruption of its business and harm to its reputation, plus the costs of litigation, including attorneys' fees. If the wholesaler elects to receive or is otherwise found to be entitled to monetary damages only, and not injunctive relief, the damages shall be the value of the wholesaler's business distributing the supplier's brands, including:

(1) The laid-in costs to the wholesaler of the inventory of the supplier's products, including any State and local taxes paid on the inventory by the wholesaler, plus a reasonable charge for handling of the products upon surrender of the inventory to the supplier.

(2) The fair market value of all assets, including ancillary businesses of the wholesaler used in distributing the supplier's products. The total compensation to be paid to the wholesaler shall be reduced, however, by any amount received by the wholesaler from sale of assets of the business used in distributing the supplier's products as well as by the value such assets have to the wholesaler unrelated to the supplier's products. "Fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at a time prior to the alteration, termination or failure to renew, when each possesses all information relevant to the transaction.

"§ 18B-1307. Transfer or merger of wholesaler's business.

(a) Right of Transfer to Designated Family Member upon Death. – Upon the death of a wholesaler, that individual's interest in the wholesaler business, including the rights under the franchise agreement with the supplier, may be transferred or assigned to a designated family member. The transfer or assignment shall not be effective until written notice is given to the supplier, but the supplier's consent is not required for the transfer or assignment. "Designated family member" means the deceased wholesaler's spouse, child, grandchild, parent, brother or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will or other testamentary device or under the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term "designated family member" also means the person appointed by the court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

(b) Approval of Certain ~~Transfers.~~and Mergers. – Upon notice to and approval by the supplier, an individual owning an interest in a wholesaler may sell, assign or transfer that interest, including the wholesaler's rights under its franchise agreement with the supplier, to any qualified person. Likewise, a wholesaler may merge with another wholesaler in the State, transferring to the new wholesaler entity the merging wholesaler's existing franchise rights. Within 30 days of receipt of notice of the intended sale, ~~assignment or transfer,~~ assignment, transfer, or merger, the supplier shall request any additional relevant, material information reasonably necessary for deciding whether to approve the transaction. The supplier shall have 30 days from receipt of that information to object to the sale, ~~assignment or transfer.~~ assignment, transfer, or merger. The supplier may object only if the proposed ~~transferee~~ transferee, or the wholesalership resulting from the merger, fails to meet qualifications and standards that are nondiscriminatory, material, reasonable and consistently applied to North Carolina wholesalers by the supplier. The burden shall be upon the supplier to prove that the proposed transferee or merged wholesaler is not qualified.

(b1) Factors That May Be Considered. – In determining whether the proposed transferee or merged wholesaler is a qualified person, the supplier shall consider, but is not limited to the following factors:

(1) Whether the proposed transferee has the financial capacity to purchase the wholesaler or the specified interest upon terms that will not jeopardize the future operation of the business, or whether the new entity resulting from a merger will have such financial capacity to operate successfully, and whether under such ownership the wholesaler will be able to provide financial support necessary to the successful operation of the business, including market spending, capital expenditures, and any equity capitalization or refinancing requirements.

(2) Whether the proposed transferee, or the new entity resulting from a merger, has the proven business experience to hire and maintain a management team to successfully operate the business.

(3) If the proposed transferee does not have experience in the beer business, whether the transferee has other experience to enable it to operate a distributorship successfully and whether the transferee is willing to participate in training provided by the supplier.

(4) Whether the proposed transferee, or a party to the merger, already is a wholesaler for the supplier in a different territory and, if so, whether sufficient time and attention can be devoted to an additional market area.

(b2) Business Considered on Own Merits. – In determining whether a proposed transferee, or the entity resulting from a merger, is a qualified person, a supplier must consider the business on its own merits and may not designate a specifically identified person as the only purchaser who will be approved.

(c) ~~Damages. A~~Remedies. – A wholesaler may seek injunctive relief to enforce the provisions of this section. In addition to any such injunctive relief, a supplier who disapproves or prevents a proposed assignment or change of ownership or merger in violation of this section shall be liable to the wholesaler who proposed to make the sale, ~~assignment or transfer~~assignment, transfer, or merger for the difference between the disapproved sale price and a subsequent actual price of a sale of the same assets completed within a reasonable period. If, however, the proposed transfer or sale was to a business associate at a bargain price, the amount of compensation shall be at least the fair market value of the interest proposed to be sold or transferred, minus the proceeds of an actual sale of the interest completed within a reasonable time. The supplier also shall be liable for any damages suffered by the wholesaler in its business if, because of the supplier's unlawful refusal to approve a sale, transfer, or merger, the wholesaler is unable to complete a sale, transfer, or merger and remains in business.

"**§ 18B-1308. Article part of all franchise agreements.**

The provisions of this Article shall be part of all franchise agreements as defined in G.S. 18B-1302 and may not be altered by the parties. A wholesaler's rights under this Article may not be waived or superseded by the provisions of a written franchise agreement prepared by a supplier that are in any way inconsistent with or contrary to any part of this Article. The rights of a wholesaler under this Article shall remain in effect regardless of a provision in a written franchise agreement prepared by a supplier that purports to require arbitration of a franchise dispute or that purports to require legal remedies to be sought in a different jurisdiction.

"**§ 18B-1309. Mediation at direction of Alcoholic Beverage Control Commission.**

If a dispute arises between a wholesaler and supplier under this Article, and such dispute appears likely to lead to litigation, the Commission, upon request of any party or on its own initiative, may require the parties to participate in mediation in an effort to resolve the dispute. This authority shall be in addition to the Commission's authority to issue declaratory rulings pursuant to G.S. 150B-4. The Commission may designate the mediator, in which case the Commission shall pay the mediator's fee, or the Commission may direct the parties to agree upon and share the costs of a mediator. If the parties then cannot agree upon a mediator, the Commission shall designate the mediator and the fees shall be divided evenly by the parties. The Commission shall direct that the mediation be completed within a specified period of time. Except for injunctive relief, no lawsuit or other legal action concerning the dispute may be filed until the mediation is completed and is unsuccessful, unless necessary to avoid expiration of a statute of limitation."

SECTION 2. The provisions of this act are severable and, if any phrase, clause, sentence, or provision is declared to be unconstitutional, is preempted by federal law or

regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected thereby.

SECTION 3. This act is effective when it becomes law, and its provisions shall apply to all existing franchise agreements. A supplier's shipment of malt beverages to a wholesaler in North Carolina following the effective date of the act shall constitute acceptance by the supplier of the terms of this act, which shall be considered incorporated into the agreement between the supplier and wholesaler.

SENATE BILL 745:
Beer Franchise Law Clarifications

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2011
Introduced by:	Sen. Allran	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S745-CSMA-25		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 745 amends the requirements for franchise agreements for beer, prohibits discrimination by beer suppliers and beer wholesalers, provides for the termination of franchise agreements by small breweries in certain situations, clarifies the definition of good cause for termination of a franchise agreement, clarifies provisions for monetary damages for wrongful termination of agreements, provides for mergers of wholesalers, and allows the ABC Commission to require mediation of certain disputes.***

[As introduced, this bill was identical to H764, as introduced by Reps. Lewis, Rhyne, T. Moore, Martin, which is currently in House Commerce and Job Development Subcommittee on Alcoholic Beverage Control.]

CURRENT LAW: Beer franchises are governed by Article 13 of Chapter 18B of the General Statutes. This Article provides that a franchise agreement between a wholesaler of malt beverages and a supplier of malt beverages exists whenever a written distribution agreement has been entered into between the parties, or when the parties have acted as if an agreement exists by shipping, accepting shipment of, paying for, or accepting payment for an order of malt beverages.

Franchise agreements may only be altered, terminated, or not renewed for good cause.. "Good cause" is defined as when a wholesaler fails to comply with the reasonable, material terms of the agreement. "Good cause" is defined by statute not to include failure of a wholesaler to engage in conduct that violates State and federal law or a change in ownership of the supplier. Written notice of at least 90 days must be given to alter, terminate, or not renew an agreement for good cause.

An agreement may be terminated or not renewed for cause without advanced notice for the following reasons:

- Insolvency of the wholesaler.
- Revocation of the wholesaler's permit or license for more than 30 days.
- Conviction of the wholesaler, or a partner who owns 10% or more of the business, of a felony that would affect the goodwill of the business.
- Fraudulent conduct of the wholesaler.
- Failure of the wholesaler to pay for product.
- Assignment, sale or transfer of the wholesaler's business without written consent of the supplier, unless the transfer is to a designated family member upon the death of the wholesaler.

Wholesalers may seek injunctive relief or monetary damages for agreements that are altered, terminated, or not renewed in violation of Article 13 of Chapter 18B. Monetary damages include the costs of the supplier's inventory the aggrieved wholesaler has and the fair market value of assets of the wholesaler used to distribute the supplier's product.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 745 does all of the following:

Franchise Agreements: Makes the following clarification to franchise agreements:

- Clarifies that a franchise agreement applies to all supplier products under the same brand name. Different categories of product under a common identifying trade name are considered the same brand.
- The meaning of good cause cannot be modified or superseded by a written franchise agreement.
- A wholesaler's rights under Article 13B of Chapter 18 may not be waived or superseded by a franchise agreement and a wholesaler's rights shall remain in effect regardless of an agreement that attempts to require arbitration of a franchise dispute, or requires legal remedies to be sought in a different jurisdiction.

Nondiscrimination by Wholesalers: Requires wholesalers to sell malt beverages in its designated territory without discrimination, including the sale price of product at the time of delivery.

Supplier Prohibitions: Prohibits a supplier from engaging in any of the following:

- Withdrawing money from a wholesaler's account without permission.
- Presenting a franchise agreement, amendment or renewal, or attempting to coerce a wholesaler to sign an agreement, amendment or renewal that does not comply with the laws of this State.
- Requiring a wholesaler to agree to waive compliance with Article 13 of Chapter 18B.
- Coercing a wholesaler to sign an agreement by threatening to refuse or delay a sale, transfer, or merger, of the wholesaler's business.
- Termination, cancellation, or nonrenewal of an agreement if a wholesaler refuses to agree to an amendment to the agreement.
- Prohibiting a wholesaler from distributing the product of another supplier, unless reasonable grounds exist for prohibiting the acquisition and the acquisition would result in the wholesaler acquiring 80% or more of all malt beverage products sold in a territory.
- Refusing to approve or require a wholesaler to terminate a brand manager or successor manager without good cause.
- Discriminating between licensed wholesalers regarding price, allowances, rebates, refunds, commissions, discounts, or services.

Termination of Agreement by Small Brewery: Provides small breweries may terminate an agreement if the small brewery pays the wholesaler the fair market value for distribution rights of each affected brand. The termination shall not be effective until the brewery and the wholesaler agree on the fair market value for the brands, and the wholesaler has received compensation.

Absence of Good Cause: Provides good cause for altering, terminating, or not renewing an agreement shall not include the following:

- Sale or transfer of the right to use the trade name of the brand to a successor supplier.
- Failure of a wholesaler to meet standards unilaterally imposed or revised by the supplier.
- A new franchise agreement between a wholesaler and another supplier.

- The desire of a supplier to consolidate franchises.

Monetary Damages for Wrongful Termination of Agreement: Provides that a wholesaler may obtain monetary damages in addition to injunctive relief. If franchise rights are retained through injunctive relief, the monetary damages a wholesaler may seek are losses from the disruption of the wholesaler's business and the costs of litigation including attorney's fees.

Merger and Transfer of Wholesaler Business: Clarifies a wholesaler may transfer rights under a franchise agreements through merging with another qualified wholesaler, as well as transfer business to another qualified wholesaler.

The factors that may be considered in the determination of whether a wholesaler is qualified for merger or transfer are:

- Whether the proposed transferee has the financial capacity to purchase the interest, or whether the proposed merged entity will have the financial capacity to operate successfully.
- Whether the proposed transferee or merged entity has the proven business experience to hire and maintain a management team to operate successfully.
- Whether a proposed transferee with no experience in the beer industry has sufficient other experience to operate a distributorship successfully.

In determining whether a proposed transferee or merged entity is qualified, a supplier must consider the business on its own merits and may not designate a specific individual as the only purchaser that may be approved.

A wholesaler may seek injunctive relief to enforce the merger and transfer provisions in Article 13 of Chapter 18B in addition to the monetary damages currently allowed by statute. The monetary damages are modified to include damages of the wholesaler due to a supplier's unlawful refusal to approve a sale, transfer, or merger.

Mediation at ABC Commission: Authorizes the ABC Commission to require parties to participate in mediation to resolve disputes that arise under Article 13 of Chapter 18B. The Commission shall designate a specified period of time in which the mediation must be completed. Except for injunctive relief, no lawsuit or other legal action may be taken until the mediation is completed, unless the legal action is necessary to avoid an expiration of a statute of limitation.

EFFECTIVE DATE: This act is effective when it becomes law and applies to all existing franchise agreements. A supplier's shipment of malt beverages to a wholesaler in North Carolina following the effective date of this act shall constitute acceptance by the supplier of the terms of this act, which shall be incorporated into the agreement between the supplier and the wholesaler.

SENATE BILL 745—Beer Franchise Law Clarifications

This bill is about fairness in the marketplace.

The breweries will be required to treat their wholesalers without discrimination. This will keep NC beer distributors strong and viable.

The members of the North Carolina Beer & Wine Wholesalers Association directly employ 5000 hardworking men and women. They pay $135 million each year in excise taxes to the State and they pay $348 million in direct wages and health care benefits.

Why is this bill necessary?

In the last three years, there have been several dozen forced consolidations of beer distributorships in America. When that happens, jobs are lost.

This bill provides much-needed protection from wrongful termination of distribution agreements. SB 745 clearly defines those acts that are "good cause" for termination, along with those that are not.

Non-discriminatory treatment

SB 745 requires brewers to sell their product to each of their wholesalers at the same price---excluding freight costs.

Wholesalers are currently required by North Carolina law to sell to their retailers at the same price. This bill simply asks the same of the brewers to the wholesalers.

Senate Bill 745 will level the playing field to all wholesalers and retailers in a fair manner. The large brewers will not continue to pick and choose favorites in their pricing. This is already the law in a number of states including Arkansas, Virginia, West Virginia, Indiana, Maryland and Kansas.

The proposed committee substitute (PCS) to Senate Bill 745 also has the support of the N.C. Brewers Guild, representing more than 20 small brewers in the state.

"MillerCoors has made consolidation of its distribution network one of its highest priorities."

Tim Owston, MillerCoors Vice President, August 19, 2008

"Anheuser Busch InBev is based in Belgium and largely supported and managed by Brazilian leadership, while MillerCoors is majority controlled by SABMiller out of London....Both ABI and MillerCoors have forced egregious and potentially illegal contract provisions upon distributors who often have no choice but to comply."

Marin Institute, February 2010

MillerCoors sued by Ohio beer distributors

Business Courier , Cincinnati, OH. September 5, 2008

"Distributors are bracing for the little things MillerCoors can do to make life miserable for its unwanted distributors: No more half truckloads, no new products or line extensions, shorter credit terms."

Harry Schumacher, Modern Brewery Age Magazine, October 2008

"MillerCoors tries to turn the clocks back to a time when suppliers could just terminate distributors without regard to those pesky beer franchise statutes.....40 of their distributors didn't even get the (new MillerCoors distributor) contract in California, Indiana, Colorado and Ohio."

Modern Brewery Age Magazine, October 2008

Illinois blocks Anheuser-Busch's deal to buy City Beverage

St. Louis Business Journal , March 10, 2010

Illinois regulators have thwarted Anheuser-Busch's attempt to buy its largest Chicago-area distributor. The Illinois Liquor Control Commission says it must protect the three-tier distribution system that requires beer to be sold to a distributor before reaching a store or bar.

Ousted distributors fight MillerCoors

Rocky Mountain News , Denver, CO, September 4, 2008

"A decade ago, only 10 percent of the beer volume in America was controlled by foreign-owned companies. Today, almost 90 percent of beer consumed in the U.S. is manufactured by foreign-owned companies. These companies are located in countries that sell alcohol very differently than we do and would prefer not to be bothered with state laws that hold them accountable."

U.S. Rep. Howard Coble (R—North Carolina)

"The State of Southern Beer"

May 27, 2011

Re: H764/S745 - Beer Franchise Law Clarifications

Dear Members of the North Carolina General Assembly,

I am the President of the North Carolina Brewers Guild, a trade organization which represents the interests of 45 craft brewers throughout North Carolina. On behalf of the Guild and our brewery members, I write to express our full support for H764/S745 - Beer Franchise Law Clarifications. This legislation promotes job growth and development for North Carolina breweries and our wholesaler partners. Several key provisions of this legislation are vital to our members' ability to invest in developing new and innovative products. We worked closely with North Carolina industry members and have reached common ground. We fully support this legislation and hope you will as well.

Sincerely,

Jamie Bartholomaus
Brewmaster/President, Foothills Brewing
President, N.C. Brewers Guild

cc: Anna Lockhart, Executive Director, NC Brewer's Guild
Tim Kent, Executive Director, NC Beer & Wine Wholesalers Assoc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Cadey Thomas	NCAR
Doug Hedon	Williams Mullen
Michelle Frazier	Manning Fulton
Jake Cashion	NC Chamber
Virginia Annuitchez	Harrell & Assoc.
Bill McAulay	PSNC Energy
Sharon Miller	CUCA
Chip Killian	Nelson Mullins
Bill Haigh	Verizon
Joey Gardner	DMV License + Theft

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
KRIS GARDNER	BEER & WINE WHOLESALERS ASSOC.
Paul Powell	R.H. Barringer Dist.
Henry Jones	Attorney Raleigh
John Palmato	NCAOA
John McMillan	MFOS
Doug Bailey	A-B
[illegible]	MWC
Emily Gunn	MWC
[illegible]	MCIC
John Bowdish	AstraZeneca
Don Calloway	A-B

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Cors	TNC
Jay Leutze	SAHC
JAIME KING	NCEL
Anna Lockhart	NC Brewer's Guild
CATHERINE HEATH	STOPNCANNEXATION

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 2, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Whitney Christensen	Jordan Price
Richard A Thompson	Dominion NC Power
Lucy J. Allen	NCUC
Susan Kaboni	NCUC
B. E Fe[illegible]	NCUC
Bill Culpepper	NC Utilities Commission
S Watson	NCUC
Butch Gunnells	NC Ber A
Jorge Suddath	PSV
Len Anthony	Progress Energy
Kim Campbell	NCUC
Kendal Bowman	Progress Energy

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 2, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kay Emanuel	Legislative Reporting Services
Blake Prevatte	SEANC
Rob Black	Teamsters
Carson Hurt	FSP
Susan Vick	FSP
Tom Fetzer	Fetzer Strategic
Mark Croft	R. H. Bennett Dist
Tim Bumgarner	R. H. Bumgarner Dist.
Tim Kent	NC Beer & Wine Wholesalers

SENATE COMMERCE COMMITTEE
Tuesday, June 7, 2011 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 7, 2011 in room 1027 of the Legislative Building. Ashley Gorman and Bethany Spivey of Greensboro, Blythe Lane of Cary, and Jake Anthony and Brad Yovanovich of Raleigh served as pages. Twenty-three members of the committee were present. Senator Apodaca presided as chair.

H.B. 181 – Add Supt. To NC Econ. Dev. Bd.

Senator Brown was recognized to explain the bill. It increases the membership of the Economic Development Board from 38 to 39 members by adding the Superintendent of Public Instruction, or designee, to the Board, as recommended by the Joint Legislative Joining Our Businesses and Schools Study Commission. Senator Blue moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 447 – Rewrite Landscape Contractor Laws

Senator Stevens asked to be recused from discussing and voting on the bill due to a potential conflict of interest. Senator Brown was recognized to explain the bill. Senator Hise moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS rewrites Chapter 89D of the General Statutes, which regulates landscape contractors. Senator Hise moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 781 – Regulatory Reform Act of 2011

Senator Brown was recognized to explain the bill. The bill is a recommendation of the Joint Legislative Regulatory Reform Committee. It makes numerous changes to the Administrative Procedure Act relating to the rulemaking process, the contested case process, and judicial review of agency decisions. The bill also makes a number of other changes to the laws relating to certain environmental policies. Karen Cochrane-Brown, a staff attorney with the Research Division, was recognized to explain the bill and answer questions. Dan Conrad, legal counsel to the NC Conservation Network, Mary MacLean Asbill, legal counsel to the Southern Environmental Law Center, were recognized to speak in opposition to the bill. Lisa Martin, Director of Governmental Operations for the NC Homebuilders Association, was recognized to speak in favor of the bill. Senator Nesbitt moved for a favorable report with a sequential referral to the Senate Agricultural Committee. The motion carried. A copy of the bill and the summary is attached.

S.B. 293 – Catawba Ecocomplex Renewable Energy

Senator Allran was recognized to explain the bill and Senator Vaughan moved to adopt the PCS for discussion. The motion carried. The PCS authorizes the establishment of

ecocomplex renewable energy demonstration parks in Catawba County. Senator Blake moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 533 – Individually Metered Units/Tenant Charged

Senator Hunt was recognized to explain the bill. Senator Meredith moved to adopt the PCS and the motion carried. The PCS authorizes the Utilities Commission to adopt procedures to allow lessors of residential buildings to charge the actual costs of providing electric service to individual tenants in a unit, where the lessor has separate leases for each tenant in an individual unit, makes other conforming changes. Senator Hise moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S587 – Study ElectriCities Relief

This bill was withdrawn from the agenda.

The meeting adjourned at 11:44 AM.

Senator Tom Apodaca, Presiding Chair

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, June 7, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 181	Add Supt. to NC Econ. Dev. Bd.	Rep. Glazier
SB 293	Catawba Ecocomplex Renewable Energy.	Sen. Allran
SB 447	Rewrite Landscape Contractor Laws.	Sen. Brown Sen. Apodaca
SB 533	Individually Metered Units/Tenant Charged.	Sen. Hunt
SB 587	Study ElectriCities Relief.	Sen. Newton
SB 781	Regulatory Reform Act of 2011.	Sen. Rouzer Sen. Brown

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, June 07, 2011

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

FAVORABLE

S.B. **781** Regulatory Reform Act of 2011.
Sequential Referral: Agriculture
Recommended Referral: None

H.B. **181** Add Supt. to NC Econ. Dev. Bd.
Sequential Referral: None
Recommended Referral: None

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

S.B. **293** Catawba Ecocomplex Renewable Energy.
Draft Number: 35264
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **533** Individually Metered Units/Tenant Charged.
Draft Number: 35265
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

S781 – Sen. Brown
H181 –Sen. Brown
S533 – Sen. Hunt
S781 – Sen. Brown

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, June 07, 2011

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

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

S.B. **447** Rewrite Landscape Contractor Laws.

Draft Number:	55311
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:
S447 – Sen. Brown

HOUSE BILL 181*

Short Title:	Add Supt. to NC Econ. Dev. Bd.	(Public)
Sponsors:	Representative Glazier (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ADD THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE ECONOMIC DEVELOPMENT BOARD, AS RECOMMENDED BY THE JOINT LEGISLATIVE JOINING OUR BUSINESSES AND SCHOOLS (JOBS) STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-434(b) reads as rewritten:

"(b) Membership. – The Economic Development Board shall consist of ~~38~~39 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. The Secretary of Revenue shall serve as an ex officio, nonvoting member. The Secretary of the Department of Cultural Resources shall serve as an ex officio, nonvoting member. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the Superintendent of Public Instruction, or designee, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board. Effective with the terms beginning July 1, 1997, one of the Governor's appointees shall be a representative of a nonprofit organization involved in economic development and two of the Governor's appointees shall be county economic development representatives. The Governor shall designate a chair and a vice chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and G.S. 138-6, as the case may be. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1."

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

HOUSE BILL 181:
Add Supt. to NC Econ. Dev. Bd

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2011
Introduced by:	Rep. Glazier	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 181 would increase the membership of the Economic Development Board from 38 to 39 members by adding the Superintendent of Public Instruction, or designee, to the Board, as recommended by the Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission.

[As introduced, this bill was identical to S124, as introduced by Sens. Brown, Hartsell, which is currently in Senate State and Local Government.]

CURRENT LAW: Currently, the Economic Development Board consists of 38 members including:

- The Secretary of Commerce, who serves as secretary of the Board.
- The Secretary of Revenue as nonvoting member.
- The Secretary of the Department of Cultural Resources as a nonvoting member.
- Four members of the House of Representatives, appointed by the Speaker.
- Four members of the Senate, appointed by the President Pro Tempore.
- The President of The University of North Carolina, or designee.
- The President of the North Carolina Community College System, or designee.
- The Secretary of State.
- The President of the Senate, or designee.
- 23 members appointed by the Governor, one of whom represents a nonprofit organization involved in economic development, and two of whom are county economic development representatives.

G.S. 143B-434 (a) sets forth the duties of the Board. (See, attachment)

BILL ANALYSIS: The Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission found that "communications between leaders in education and economic development is critical to preparing students to meet employment and workforce preparation needs of the State." House Bill 181 would add the Superintendent of Public Instruction to the membership of the Economic Development Board, as recommended by the JOBS Commission.

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

Karen Cochran-Brown, counsel to House on Job Developemtn , substantially contributed to this summary.

H181-SMRC-45(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 447
PROPOSED COMMITTEE SUBSTITUTE S447-CSSUf-18 [v.1]

6/6/2011 4:10:11 PM

Short Title: Rewrite Landscape Contractor Laws. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS REGULATING LANDSCAPE CONTRACTORS AND AUTHORIZING THE NORTH CAROLINA LANDSCAPE CONTRACTORS' LICENSING BOARD TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 2. Chapter 89D of the General Statutes is amended by adding the following new sections to read:

"**§ 89D-11. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Landscape Contractors' Licensing Board.

(2) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(3) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:

a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.

b. Practices the act of horticulture consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.

d. Designs, installs, or maintains low voltage landscape lighting systems; provided such low voltage lighting systems do not exceed 50 volts and constitutes a Class II or III cord and plug connected power system within the meaning of G.S. 87-43.1(7).

e. Engages in the construction of garden pools, fountains, pavilions, arbors, retaining walls, fences, walks, patios, driveways, or other decorative landscape features, excluding poured concrete or asphalt driveways.

(4) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"**§ 89D-12. License required; use of seal; posting license.**

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation 'landscape contractor,' or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(b) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in any of the following:

(1) The practice of landscape architecture as defined in G.S. 89A-1.

(2) The practice of engineering as defined in G.S. 89C-3.

(3) Practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(4) The practice of irrigation contracting as defined in G.S. 89G-1.

(5) The practice of architecture as defined in G.S. 83A-1.

(6) The practice of plumbing, heating group number one, heating group number two, heating group number three, fire sprinkler or fuel piping contracting as defined in G.S. 87-21, provided the landscaping contractor may install piping, fittings, valves, and associated components for the purpose of landscape contracting that is downstream of potable water source, groundwater source, or grey water source, and downstream of a backflow prevention assembly.

(7) The practice of electrical contracting as defined in G.S. 87-43.

(c) Upon licensure by the Board, each landscape contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend 'N.C. Licensed Landscape Contractor.' A landscape contractor may use the seal only while the license is valid.

(d) Every landscape contractor issued a license under this Chapter shall display the license conspicuously in the landscape contractor's place of business. Every landscape contractor shall display the license number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape contracting business.

"**§ 89D-13. Exemptions.**

The provisions of this Chapter shall not apply to the following:

(1) Any federal, State, or local governmental agency performing landscaping on public property.

(2) The North Carolina Department of Transportation (NCDOT). However, for landscape installations or establishment periods for any project that exceeds the current contract amount requiring performance and payment bonds according to State law, NCDOT shall require a licensed landscape contractor to perform the work. NCDOT, at its discretion, may require a licensed landscape contractor for landscape projects of any cost.

(3) Any property owner performing landscape work on his or her own property.

(4) Any person or business owning or operating a golf course.

(5) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than two thousand five hundred dollars ($2,500).

(6) Any person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform landscape construction or contracting. A public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.

(7) Any person or business licensed as an electrical contractor under Article 4 of Chapter 87 of the General Statutes who is designing, installing, or maintaining any electric work, wiring, devices, appliances, or equipment.

(8) Any person or business licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who is installing pipes, fixtures, apparatus, or appurtenances to supply water thereto or convey sewage or other waste therefrom, including the installation, repair, or maintenance of water mains, water taps, services lines, water meters, or backflow prevention assemblies supplying water for irrigation systems or repairs to an irrigation system.

(9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.

(10) A professional landscape architect licensed under Chapter 89A of the General Statutes.

(11) An individual or a business engaged in any of the following activities in performing that activity:

a. Clearing and grading plots and areas of land.

b. Erosion control.

c. Arboriculture, including consultations on pruning and removal of trees.

d. North Carolina Department of Agriculture and Consumer Services certified sod producers that install sod, seed, or plugs.

e. Landscape construction performed by utilities contractors for the purpose of grading and erosion control.

f. Lawn mowing, turf edging, and debris removal services.

g. Turf management or lawn care services only, including fertilization, aeration, weed control, or other turf management or lawn care practices other than mowing or edging.

h. Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.

"**§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

(a) There is created the North Carolina Landscape Contractors' Licensing Board. The Board shall consist of nine members appointed as follows:

(1) One member appointed by the Governor who is a member of the general public.

(2) One member appointed by the Commissioner of Agriculture pursuant to recommendations from The North Carolina Green Industry Council.

(3) One member appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc., who is a practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Pest Inspection Program.

(4) Four members who are licensed landscape contractors in the business of landscape construction or contracting. One of the four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives pursuant to recommendations from The North Carolina Green Industry Council; one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to recommendations from the Carolinas Irrigation Association, who is also a licensed irrigation contractor; and two shall be appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc.

(5) One member appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects who is a registered landscape architect.

(6) One member appointed by the President of The University of North Carolina from within the land grant university community who is knowledgeable in landscaping methods and practices.

(b) All appointments shall be for three-year terms. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"**§ 89D-15. Powers and duties.**

The Board shall have the following powers and duties to:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.

(4) Issue, renew, deny, restrict, suspend, or revoke licenses.

(5) Reprimand or otherwise discipline licensees under this Chapter.

(6) Receive and investigate complaints from members of the public.

(7) Conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.

(10) Collect fees required by G.S. 89D-21 and any other monies permitted by law to be paid to the Board.

(11) Require licensees to file and maintain an adequate surety bond.

(12) Establish and approve continuing education requirements for persons licensed under this Chapter.

(13) Employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.

(14) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.

(15) Adopt and publish a code of professional conduct for all persons licensed under this Chapter.

(16) Adopt and publish a code of minimum practice standards for landscape construction and contracting.

(17) Adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"**§ 89D-16. Application for license; qualifications; examination; issuance.**

(a) Upon application to the Board and payment of the required fees, an applicant for licensure as a landscape contractor may sit for the examination if the applicant submits evidence demonstrating the applicant's qualifications for licensure under this Chapter as prescribed in rules adopted by the Board and meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) Provides evidence of business identification as required by the Board.

(4) Has at least three years of experience in landscape construction or contracting or the educational equivalent. Two years of educational training in landscape construction or contracting shall be the equivalent of one year of experience.

(5) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars ($10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall administer examinations at least twice a year at a time and place to be determined by the Board.

(c) When the Board determines that an applicant has met all the qualifications for licensure, submitted the required fee, and passed the examination, the Board shall issue a license to the applicant.

"**§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation pays the license fee required by G.S. 89D-21 and complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation, are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the

name of a corporation and exercise direct supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company pays the fee required by G.S. 89D-21 and complies with the following:

(1) One or more managers or executives, as defined in G.S. 57C-1-03, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the limited liability company and exercise direct supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership pays the fee required by G.S. 89D-21 and complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the partnership and exercise direct supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business pays the fee required by G.S. 89D-21 and complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the assumed or designated trade name of the business and exercise direct supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall exercise direct supervision over a contract for landscape construction or contracting until the contract is completed.

(g) When a licensee executes a contract for landscape construction or contracting in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 90 days from the date the officer, general partner, owner, or employee ceases the relationship with the corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section. After 90 days, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued under this section is automatically suspended, and the corporation, partnership, or person shall cease practicing landscape construction or contracting.

"**§ 89D-18. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.
(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.
(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"**§ 89D-19. Reciprocity.**

The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"**§ 89D-20. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units

per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, the license shall be reinstated. Failure to request a reinstatement of the license and payment of the reinstatement fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"**§ 89D-21. Expenses and fees.**

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	250.00
(3)	Individual license fee and individual license renewal	100.00
(4)	Initial corporate, limited liability company, partnership, or trade-name license	100.00
(5)	Corporate, limited liability company, partnership, or trade-name license renewal	100.00
(6)	Late renewal fee	50.00
(7)	Reinstatement fee	500.00
(8)	License by reciprocity	250.00
(9)	Duplicate license	25.00

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a pro-rated portion of the examination fee.

"**§ 89D-22. Disciplinary action.**

The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

"**§ 89D-23. Civil penalties.**

(a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"**§ 89D-24. Injunction to prevent violation; notification of complaints.**

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor shall notify the Board of any written complaints filed against the landscape contractor not resolved within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3.(a) Members serving on the North Carolina Landscape Contractors' Registration Board on the effective date of this act shall continue to serve until members of the North Carolina Landscape Contractors' Licensing Board, newly structured under G.S. 89D-14(a), as enacted by Section 2 of this act, are appointed.

SECTION 3.(b) Once the term of one of the current public members appointed by the Governor expires, the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. Once the term of one of the current members appointed by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. All records, staff, funds, and other items of the North Carolina Landscape Contractors' Registration Board are transferred to and made the property of the North Carolina Landscape Contractors' Licensing Board.

SECTION 4. Any person, who on or before December 31, 2011, meets at least one of the following criteria shall be issued a landscape contractor's license by the North Carolina Landscape Contractors' Licensing Board, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before August 1, 2012:

(1) Is registered as a landscape contractor.
(2) Is licensed as an irrigation contractor.
(3) Is certified as a turf grass professional.
(4) Has 10 years of documented experience in the person's own business as a landscape contractor or 10 years of documented experience as an employee in a landscape contracting business, meets all other requirements and qualifications for licensure as a landscape contractor, and has one of the following:
    a. One year of credit for a two-year degree in related educational training.
    b. Two years of credit for a four-year degree in related educational training.
    c. Up to two years of credit for education or business experience in general business management.

Landscape contractors currently registered under Chapter 89D of the General Statutes shall not be required to renew the registration for the 2012 calendar year to qualify for the landscape contractor's license, as enacted by Section 1 of this act.

SECTION 5. Section 1 of this act becomes effective August 1, 2012. The remainder of this act is effective when it becomes law.

SENATE BILL 447:
Rewrite Landscape Contractor Laws

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 7, 2011
Introduced by:	Sens. Apodaca, Brown	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S447-CSSUf-18		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 447 rewrites Chapter 89D of the General Statutes, which regulates landscape contractors.***

CURRENT LAW: G.S. 89D-1 through 89D-10 in Chapter 89D provide for certification of landscape contractors in North Carolina. The statutes define 'landscape contractor', establish a Landscape Contractor's Registration Board, provide for examination and certification of contractors, set fees, and sets out powers and duties of the Board.

BILL ANALYSIS: The PCS for Senate Bill 447 rewrites the landscape contractor laws as follows:

Section 1 repeals G.S. 89D-1 through 89D-10, which are all of the existing statutes regulating landscape contractors in North Carolina.

Section 2 rewrites the statutes regulating landscape contractors as G.S. 89D-11 through 89D-24:

G.S. 89D-11 provides new definitions that apply in Chapter 89D, including a more detailed definition of what constitutes landscape contracting.

G.S. 89D-12 requires a license for any person engaging in the practice of landscape construction or contracting and using the designation 'landscape contractor'. The section specifies that landscape contractors are not authorized to engage in the following practices: landscape architecture; engineering; well contracting; architecture; plumbing and heating contracting; and electrical contracting.

A licensed landscape contractor is required to display the license conspicuously in the licensee's place of business and to display the license number on all business cards, contracts, and vehicles.

G.S. 89D-13 provides exemptions from licensing for government agencies landscaping public property; the Department of Transportation; property owners landscaping the owner's own property; persons owning or operating a golf course; landscaping work costing less than $2500 for a 12-month period; license general contractors possessing classification as building, residential, or public utilities contractor; licensed electrical contractors engaging in electric work, wiring, devices, appliances, or equipment; licensed plumbing contractors installing pipes, fixtures, apparatus, or appurtenances; licensed professional engineers; licensed professional landscape architects; and individuals or businesses engaged in specified activities.

G.S. 89D-14 creates a new North Carolina Contractors' Licensing Board with the following members: one member appointed by the Governor; one member appointed by the Commissioner of Agriculture; one practicing nurseryman appointed by the Board of Directors of the NC Nursery and Landscaping Association; four licensed landscape contractors, two appointed by the General Assembly and two by the Board of Directors of the NC Nursery and Landscaping Association; one registered landscape architect appointed by the Board of Directors of the NC Chapter of the American Society of Landscape Architects; and one member that is knowledgeable in landscaping methods and practices appointed by the President of the University of North Carolina.

G.S. 89D-15 specifies powers and duties of the Board, including administering and enforcing the Chapter; adopting rules; examining applicants; issuing, denying, and revoking licenses; disciplining licensees; conducting investigations of violations by licensees; conducting administrative hearings; seeking injunctive relief; collecting fees; requiring licensees to maintain surety bonds; requiring continuing education; and publishing a code of professional conduct and minimum practice standards for licensees.

G.S. 89D-16 requires an applicant for licensure to meet the following qualifications: is at least 18 years old; is of good moral character; provides evidence of business identification; has at least 3 years of experience or the educational equivalent; and files with the Board a surety bond or letter of credit in the amount of $10,000.

If the applicant meets all qualifications, then the applicant must pass an examination administered by the Board.

G.S. 89D-17 provides requirements for licensing of corporations, limited liability companies, partnerships, and persons doing business under a trade name.

G.S. 89D-18 provides for licensing of nonresident individuals and foreign entities. The Board is required, upon request, to provide the Secretary of Revenue information about nonresidents licensed by the Board. If the Secretary of Revenue determines that a nonresident owes a delinquent income tax debt, the Board may be required not to renew the license of the nonresident.

G.S. 89D-19 provides for reciprocity with other states and countries, allowing the Board to issue a license to any person who is licensed in another state or country if that state or country has licensing requirements that are substantially equivalent to North Carolina.

G.S. 89D-20 requires that licenses be renewed on or before August 1 each year. If they are not renewed, they are automatically revoked. A license may be renewed in the year following expiration if the applicant pays a late fee; the Board finds the licensee has not misused the license or engaged in landscape contracting after the license was revoked; and the applicant is otherwise eligible.

This section also requires licensees to complete seven units of continuing education per year.

G.S. 89D-21 sets fees to be collected by the Board. The act increases the application, examination, license, and renewal fees from $75 to $100, increases the late renewal fee from $25 to $50, and increases the fee for a duplicate license from $5 to $25. The act also provides for a reinstatement fee of $500 and a fee of $250 for license by reciprocity.

G.S. 89D-22 authorizes the Board to deny, restrict, suspend, or revoke a license, or refuse to issue or renew a license if the applicant uses fraud or misrepresentation to obtain a license; practices landscape contracting by misrepresentation; commits gross malpractice; has been convicted of a crime indicating the person is unfit to practice landscape contracting; has been declared incompetent by a court; has violated the provisions of the Chapter or rules adopted by the Board; uses the seal in an unauthorized manner; or fails to file the required surety bond.

G.S. 89D-23 authorizes the Board, after taking into consideration specific listed factors, to assess a civil penalty not in excess of $2000 for each violation of the Chapter or the violation of any rule adopted by the Board.

G.S. 89D-24 authorizes the Board to seek injunctive relief in superior court to prevent any person from violating the provisions of the Chapter or rules adopted by the Board.

Section 3 provides for the phasing out of the current Landscape Contractors' Registration Board and the phasing in of the new Landscape Contractors' Licensing Board, which is established in this act.

Section 4 is a grandfather clause, providing that an applicant who applies and pays the required fee on or before August 12, 2012, shall be issued a license without examination, if he or she meets one of the following criteria: is registered as a landscape contractor; is licensed as an irrigation contractor; is certified as a turf grass professional; or has 10 years of experience, meets all other qualifications, and has required educational experience.

EFFECTIVE DATE: Section 1 of the bill becomes effective August 1, 2012. The remainder of the bill is effective when it becomes law.

S447-SMSU-38(CSSUf-18) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 781*

Short Title:	Regulatory Reform Act of 2011.	(Public)
Sponsors:	Senators Rouzer, Brown; and East.	
Referred to:	Commerce.	

June 6, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB CREATION AND ENVIRONMENTAL PROTECTION.

The General Assembly of North Carolina enacts:

PART I. RULE MAKING

SECTION 1. G.S. 150B-18 reads as rewritten:

"**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that has not been adopted as a rule in accordance with this Article."

SECTION 2. Article 2A of Chapter 150B is amended by adding three new sections to read:

"**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.

(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.

(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.

(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.

(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the following:

(1) The text of a proposed rule.
(2) An explanation of the proposed rule and the reason for the proposed rule.
(3) The federal certification required by subsection (g) of this section.
(4) Instructions on how and where to submit oral or written comments on the proposed rule.
(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body must approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

"**§ 150B-19.2. Review of existing rules.**

(a) The Rules Modification and Improvement Program. – The Rules Modification and Improvement Program is established to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification and Improvement Program. The OSBM shall invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must identify a specific rule or regulatory program and may include recommendations regarding modifying, expanding, or repealing existing rules or changing the rule review and publication process. The OSBM shall direct each agency to conduct an internal review of its rules as required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM shall assemble and evaluate the public comments and forward any comments it deems to have merit to the appropriate agency for further review. Agencies shall review the public comments

and prepare a report on whether any of the recommendations contained in the comments have potential merit and justify further action. Agencies shall submit a report of their findings to the OSBM by January 31 of each year. The OSBM shall make final determinations on which recommendations have potential merit and justify further action. The OSBM shall publish an annual report by April 30 of each year summarizing all public comments and resulting actions taken or planned.

(b) The OSBM shall establish a single Web portal dedicated to receiving public comments and tracking agency progress on reforming rules.

"**§ 150B-19.3. Limitation on certain environmental rules.**

(a) An agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

(2) The Environmental Management Commission created pursuant to G.S. 143B-282.

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining Commission created pursuant to G.S. 143B-290."

SECTION 3. G.S. 150B-21(f) is repealed.

SECTION 4. G.S. 150B-21.1(a3) reads as rewritten:

"(a3) Unless otherwise provided by law, ~~at least 30 business days prior to adopting a temporary rule,~~ the agency shall:

(1) ~~Submit~~ At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) ~~Notify~~ At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published."

SECTION 5. G.S. 150B-21.2 reads as rewritten:

"**§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed ~~rule.~~ rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in

connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. – An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule."

SECTION 6. G.S. 150B-21.4 reads as rewritten:

"**§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the ~~Director of the Budget~~ Office of State Budget and Management and obtain certification from the ~~Director~~ Office that the funds that would be required by the proposed rule change are available. The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The ~~Director of the Budget~~ Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an

increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of ~~the Governor~~ State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, ~~the Office of State Budget and Management,~~ the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency ~~must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or~~ shall prepare a fiscal note for the proposed rule change and have the note approved by ~~that Office.~~ the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least ~~three million dollars ($3,000,000)~~ five hundred thousand dollars ($500,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

(1) Determine and identify the appropriate time frame of the analysis.

(2) Assess the baseline conditions against which the proposed rule is to be measured.

(3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.

(4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.

(5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(b2) Content. – A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.

(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.

(3) A description of the purpose and benefits of the proposed rule change.

(4) An explanation of how the estimate of expenditures was computed.

(5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.

(c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity of a rule."

SECTION 7. G.S. 150B-21.11 reads as rewritten:

"**§ 150B-21.11. Procedure when Commission approves permanent rule.**

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval, and deliver the approved rule to the Codifier of ~~Rules, and include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee.~~ Rules.

If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule."

SECTION 8. G.S. 150B-21.12(d) reads as rewritten:

"(d) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its ~~action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee.~~ action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule."

SECTION 9. G.S. 150B-21.16 is repealed.

SECTION 10. G.S. 150B-21.17(a) reads as rewritten:

"(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.
(1a) The text of proposed rules and the text of permanent rules approved by the Commission.
(1b) Emergency rules entered into the North Carolina Administrative Code.
~~(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.~~
(3) Executive orders of the Governor.
(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
~~(5) Orders of the Tax Review Board issued under G.S. 105-241.2.~~
(6) Other information the Codifier determines to be helpful to the public."

SECTION 11. G.S. 150B-21.18 reads as rewritten:

"**§ 150B-21.18. North Carolina Administrative Code.**

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means.~~ The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules."

SECTION 12. G.S. 150B-21.21(b) reads as rewritten:

"(b) Exempt Agencies. – ~~Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.~~

Notwithstanding ~~G.S. 150B-1,~~ any other provision of law, an agency ~~other than the Utilities Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule."

SECTION 13. G.S. 150B-21.23 is repealed.

SECTION 14. G.S. 150B-21.26 reads as rewritten:

"Part 5. Rules Affecting Local Governments.

"**§ 150B-21.26. ~~Governor~~ Office of State Budget and Management to conduct preliminary review of certain administrative rules.**

(a) Preliminary Review. – At least ~~30~~ 60 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the ~~Governor~~ Office of State Budget and Management for preliminary review:

(1) The text of the proposed rule change.
(2) A short explanation of the reason for the proposed change.
(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The ~~Governor's~~ preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.
(2) Any unanticipated effects of the proposed change on local government budgets.
(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

PART II. CONTESTED CASES

SECTION 15. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

SECTION 16. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this ~~Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.~~Article."

SECTION 17. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...

~~(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision.~~"

SECTION 18. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Decision of administrative law judge.~~Final decision or order.**

(a) ~~Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in~~ In each contested case the administrative law judge shall make a final decision or order that contains findings of fact and conclusions of ~~law and return the decision to the agency for a final decision in accordance with G.S. 150B-36.~~law. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. ~~All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).~~

(b) Repealed by Session Laws 1991, c. 35, s. 6.

~~(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.~~

(d) Except for the exemptions contained in ~~G.S. 150B-1(c) and (e), and subsection (c) of this section,~~G.S. 150B-1, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges.

(e) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56."

SECTION 19. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

SECTION 20. G.S. 150B-36 is repealed.

SECTION 21. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25.

(6) The administrative law judge's ~~decision,~~ final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the~~ administrative law judge's final decision to each party."

SECTION 22. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any ~~person~~ party who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party from invoking any judicial remedy available to ~~him~~ the party under the law to test the validity of any administrative action not made reviewable under this Article."

SECTION 23. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~or by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section."

SECTION 24. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by

the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

SECTION 25. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a final decision ~~of the administrative law judge or final decision~~ shall be made part of the official record."

SECTION 26. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

SECTION 27. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope and standard of review.**

~~(a) In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence in the official record. Second, if the applicable appointing authority did not adopt the recommended decision, the court shall determine whether the applicable appointing authority's decision states the specific reasons why the applicable appointing authority did not adopt the recommended decision. If the court determines that the applicable appointing authority did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

~~(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.~~

(b) ~~Except as provided in subsection (c) of this section, in reviewing a final decision, the~~The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case ~~to the agency or to the administrative law judge~~ for further proceedings. It may also

reverse or modify the ~~agency's decision, or adopt the administrative law judge's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested ~~case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.~~case, the court shall determine whether the decision is supported by substantial evidence admissible under G.S. 150B-29, 150B-30, or 150B-31 in view of the entire record. If the court determines that the decision is not supported by substantial evidence in the record, the court may reverse the decision or remand the case to the administrative law judge if the case was heard under Article 3 of this Chapter, or to the agency if the case was heard under Article 3A of this Chapter, for entry of a decision in accordance with the evidence in the official record.

(d) In reviewing a final ~~agency~~ decision allowing judgment on the pleadings or summary judgment, ~~or in reviewing an agency decision that does not adopt an administrative law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d),~~ the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just."

SECTION 28. G.S. 7A-759(e) reads as rewritten:

"(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36, an~~ An order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules."

SECTION 29. G.S. 74-58(b) reads as rewritten:

"(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until ~~the Commission makes~~ issuance of a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon an action for injunctive relief."

SECTION 30. G.S. 74-61 reads as rewritten:

"**§ 74-61. Administrative and judicial review of decisions.**

An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

SECTION 31. G.S. 74-85 reads as rewritten:

"**§ 74-85. Administrative and judicial review of decisions.**

Any affected person may contest a decision of the Department to approve, deny, suspend, or revoke a permit, to require additional abandonment work, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

SECTION 32. G.S. 108A-70.9A(f) reads as rewritten:

"(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision ~~and record~~ to the Department in accordance with ~~G.S. 108A-70.9B.~~ G.S. 150B-37. The Department shall ~~make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly~~ notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 33. G.S. 108A-70.9B(g) reads as rewritten:

"(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. ~~OAH shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~ The judge shall prepare a written decision and send it to the ~~parties.~~ parties in accordance with G.S. 150B-37. ~~The decision shall be sent together with the record to the agency within 20 days of the conclusion of the hearing.~~"

SECTION 34. G.S. 113-171(e) reads as rewritten:

"(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final ~~decision by the Secretary.~~ decision."

SECTION 35. G.S. 113-202 reads as rewritten:

"**§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.**

...

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

...

(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate a contested case, or the ~~Secretary's~~ final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the ~~Secretary's~~ final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

...."

SECTION 36. G.S. 113-229(f) reads as rewritten:

"(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the ~~Commission makes~~ issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit."

SECTION 37. G.S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

(1) Has alleged that the decision is contrary to a statute or rule;

(2) Is directly affected by the decision; and

(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final ~~Commission~~ decision on the permit pursuant to G.S. 113A-122.

Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case."

SECTION 38. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than one thousand dollars ($1,000) for a minor development violation and ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

...

(3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final ~~agency~~ decision was served on the violator.

...."

SECTION 39. G.S. 122C-24.1(h) reads as rewritten:

"(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in ~~G.S. 150B-36.~~ G.S. 150B-37."

SECTION 40. G.S. 122C-151.4(f) reads as rewritten:

"(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. ~~The Secretary shall make a final decision in the contested case.~~"

SECTION 41. G.S. 126-4.1 is repealed.

SECTION 42. G.S. 126-14.4(e) reads as rewritten:

"(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate ~~recommended remedy.~~ remedy, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter."

SECTION 43. G.S. 126-14.4(f) is repealed.

SECTION 44. G.S. 126-37 reads as rewritten:

"**§ 126-37. ~~Personnel Commission to review~~ Administrative Law Judge's ~~recommended decision and make~~ final decision.**

(a) Appeals involving a disciplinary action, alleged discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of

Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section.~~ The ~~State Personnel Commission~~ administrative law judge is hereby authorized to reinstate any employee to the position from which the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.

(b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

~~(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.~~

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other ~~appeals, except that the decision of the State Personnel Commission shall be final.~~ appeals.

(c) If the local appointing authority is other than a board of county commissioners, the local appointing authority must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

SECTION 45. G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the penalty be adjusted accordingly."

SECTION 46. G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an

applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

(1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.

(2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.

(3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.

(4) The administrative law judge or hearing officer shall make ~~his recommended~~ a final decision within 75 days after the hearing.

~~(5) The Department shall make its final decision within 30 days of receiving the official record of the case from the Office of Administrative Hearings.~~

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension.~~"

SECTION 47. G.S. 131F-5(b) reads as rewritten:

"(b) Departmental Review. – The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal."

SECTION 48. G.S. 131F-15(e) reads as rewritten:

"(e) Departmental Review. – The Department shall examine each application or renewal filed by a fund-raising consultant and determine whether the requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the fund-raising consultant within 10 days after its receipt of the application or renewal. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the license requirements are not satisfied, the applicant may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A

~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal."

SECTION 49. G.S. 135-44.7(c) is repealed.

SECTION 50. G.S. 143-215.22L(o) reads as rewritten:

"(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes."

SECTION 51. G.S. 143-215.94E(e3) reads as rewritten:

"(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision in a contested case proceeding under this subsection.~~"

SECTION 52. G.S. 143-215.94U(e) reads as rewritten:

"(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision regarding the revocation of a permit under this section.~~"

SECTION 53. G.S. 143-215.104P(d) reads as rewritten:

"(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision regarding assessment of a civil penalty under this section.~~"

SECTION 54. G.S. 143-215.104S reads as rewritten:

"**§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. ~~The Commission shall make the final agency decision in contested cases initiated pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency decision pursuant to this section.~~"

SECTION 55. G.S. 153A-223 reads as rewritten:

"**§ 153A-223. Enforcement of minimum standards.**

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final ~~agency~~ decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary or a final decision to the senior resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order or the final decision is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The ~~Secretary,~~ Office of Administrative Hearings, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate.

The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order."

PART III. MISCELLANEOUS ISSUES

SECTION 56. G.S. 150B-4 reads as rewritten:

"**§ 150B-4. Declaratory rulings.**

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the ~~agency, except when the agency for good cause finds issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is a final agency decision and is subject to judicial review in ~~the same manner as an order in a contested case.~~ accordance with Article 4 of this Chapter. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a ~~denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~ determination in favor of the person aggrieved.

(b) Repealed by Session Laws 1997-34, s. 1."

SECTION 57. Every State agency, board, commission, or other body with rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the body that includes for each rule the following information:

(1) Whether the rule is mandated by a federal law or regulation.

(2) If the rule is not mandated by a federal law or regulation, whether there is a federal regulation that is analogous to the rule. For purposes of this subdivision, "analogous" means the federal regulation regulates the same conduct or activity as the State regulation.

(3) If there is a federal statute or regulation analogous to the rule, whether the rule is more stringent than the federal law or regulation.

SECTION 58. The Joint Regulatory Reform Committee shall study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter 150B of the General Statutes. The Committee shall examine the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

SECTION 59.(a) G.S. 113A-12 reads as rewritten:

"**§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

(1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, or natural gas line within or across the right-of-way of any street or highway.

(2) An action approved under a general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).

(3) A lease or easement granted by a State agency for:

a. The use of an existing building or facility.
b. Placement of a wastewater line on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
c. A shellfish cultivation lease granted under G.S. 113-202.

(4) The construction of a driveway connection to a public roadway.

(5) A project for which public monies are expended if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.

(6) A major development as defined in G.S. 113A-118(c) that receives a permit issued under Article 7 of Chapter 113A of the General Statutes."

SECTION 59.(b) This section is effective when it becomes law and applies to any major development for which a permit application is received by the Department of Environment and Natural Resources on or after that date.

SECTION 60.(a) G.S. 143-215.108(d1) reads as rewritten:

"(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of 10 years."

SECTION 60.(b) G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so

request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

~~(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.~~

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

SECTION 60.(c) G.S. 143-215.1 is amended by adding a new subsection to read:

"(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term of 10 years."

SECTION 60.(d) The Department of Environment and Natural Resources shall review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 60.(e) This section is effective when this act becomes law and applies to permits that are issued on or after July 1, 2011.

SECTION 61. The Secretary of Environment and Natural Resources shall develop a uniform policy for notification of deficiencies and violations for all of the regulatory programs within the Department of Environment and Natural Resources. In developing the notification policy, the Secretary shall establish different types of notification based on the potential or actual level of harm to public health, the environment, and the natural resources of the State. The Secretary shall also review the notification policies of the United States Environmental Protection Agency and the environmental regulatory programs of other states. The Secretary shall report on the development of the notification policy to the Environmental Review Commission and the Joint Select Regulatory Reform Committee no later than October 1, 2011. The Secretary shall implement the uniform notification policy no later than February 1, 2012.

SECTION 62. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 63. Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided elsewhere in this act, this remainder of this act is effective when it becomes law.

SENATE BILL 781:
Regulatory Reform Act of 2011

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Agriculture/Environment/Natural Resources	**Date:**	June 6, 2011
Introduced by:	Sens. Rouzer, Brown	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Staff Attorney

SUMMARY: ***Senate Bill 781 is a recommendation of the Joint Legislative Regulatory Reform Committee. The bill makes numerous changes to the Administrative Procedure Act (APA) relating to the rulemaking process, the contested case process, and judicial review of agency decisions. The bill also makes a number other changes to the laws relating to certain environmental policies.***

Part I: Rulemaking.

Section 1. This section amends the law related to the scope an effect of rules to add a requirement that an agency shall not seek to enforce a policy, guideline, or other nonbinding interpretive statement that has not been adopted as a rule in accordance with the APA.

Section 2.

This section adds 3 new sections to Article 2A of Chapter 150B.

The first new section, G.S. 150B-19.1, is a set of regulatory principles that agencies must follow when developing and adopting proposed rules. The principles include:

- An agency may only adopt rules that are clearly authorized by federal or State law and that are necessary to serve the public interest.
- An agency shall seek to reduce the burden upon those who must comply with the rule.
- Rules must be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- An agency must consider the cumulative effect of rules and shall not adopt a rule that is unnecessary or redundant.
- Rules should be based on sound scientific, technical, economic or other relevant information.
- Rules must be designed to achieve the regulatory objective in a cost-effective and timely manner.

Each year, agencies must conduct a review of existing rules and repeal any rules which it finds to be unnecessary, unduly burdensome, or inconsistent with the principles.

Agencies must post information about a proposed rule on its website when it submits the rule for publication in the NC Register.

Agencies must determine whether there is overlap in its policies and programs with another agency and coordinate their rulemaking activity.

Agencies must review details of fiscal note with the rulemaking body.

Agencies must consider at least 2 alternatives to the proposed rule if the rule has a substantial economic impact.

Agencies must prepare federal certification if the rule is required by federal law and post the certification on the website.

The second new section, G.S. 150B-19.2, codifies the Rules Modification and Improvement Program from the Governor's Executive Order 70. This requires OSBM to coordinate and oversee an annual review of existing rules. The program directs OSBM to create a web portal dedicated to receiving public comments on rules and tracking agency progress on reforming rules.

The third new section, G.S. 150B-19.3, prohibits certain enumerated agencies authorized to implement and enforce environmental laws from adopting rules for the protection of the environment or natural resources that impose standards and limitations that are more restrictive than those imposed by an analogous federal law or rule, unless the rule responds to an emergency, a specific law, a change in budgetary policy, or a court order.

Section 3. Repeals a provision relating to federal certification that was moved to a new section.

Section 4. Clarifies a provision relating to temporary rulemaking.

Section 5. Makes conforming changes to the procedure for adopting a permanent rule and clarifies that fiscal notes are subject to public comment. The section also requires that agencies review any fiscal notes and the public comments related to them before adoption of a proposed rule.

Section 6. Amends the fiscal note section to (1) require OSBM to enforce the regulatory principles; (2) make failure to prepare a substantial economic impact fiscal note a basis to disapprove a rule; (3) define the steps in preparing a substantial economic impact fiscal note; and (4) add a requirement that the fiscal note identify the 2 alternative to the rule that were considered by the agency. This section also reduces the threshold for a substantial economic impact from $3,000,000 to $500,000.

Sections 7, 8 and 9. Remove obsolete references to reports to the Joint Legislative Administrative Procedure Oversight Committee.

Section 10. Deletes unused and obsolete references.

Section 11. Removes obsolete reference to a "loose leaf" format previously used for the Administrative Code.

Section 12. Clarifies that agencies which are exempt from rulemaking under the APA must submit rules inclusion in the Code.

Section 13. Deletes an unused and obsolete provision relating to a manual for notice of rulemaking proceeding and notice of text.

Section 14. Conforms reference to review by OSBM of rules that affect local government expenditures.

Part II: Contested Cases.

Sections 15 through 27 amend Articles 3 and 4 of the APA to eliminate the requirement that an ALJ's decision be returned to the agency for a final decision. The bill makes the ALJ's decision the final administrative decision in the contested case. The bill also amends the law to provide that certificate of need cases and local government personnel cases will be handled in the same manner as all other cases decided under Article 3.

Inasmuch as the bill eliminates the possibility of an agency reversal of an ALJ decision, the standard for judicial review is also modified. The bill provides that in reviewing a final decision the court will determine whether the decision is supported by substantial evidence in view of the entire record. If the

court finds that the decision is not supported by substantial evidence, it may reverse the decision and remand the case to the ALJ in Article 3 cases, or to the agency in Article 3A cases.

Sections 28 through 55 of the bill contain conforming amendments to various provisions in the General Statutes that refer to final agency decisions.

Part III: Miscellaneous Issues.

Section 56. Amends the provision of the APA which directs an agency to issue a declaratory ruling upon the request of an aggrieved person. The amendment authorizes the agency to issue a declaratory ruling to resolve a conflict or inconsistency within the agency. The section also provides that failure to issue the ruling within 60 days constitutes a determination in favor of the aggrieved person.

Section 57. Directs every state agency with rulemaking power to compile a list of all of the agency's rules that fit the following criteria:

- Rules that are mandated by federal law or regulation.
- If not mandated by federal law or regulation, rules that have a federal regulation that is analogous.
- If there is an analogous law or regulation, whether the rule is more stringent than the federal law or regulation.

The list must be delivered to the Joint Regulatory Reform Committee by October 1, 2011.

Section 58. Directs the Joint Regulatory Reform Committee to study the requirements for administrative hearings conducted under Article 3A of the APA. The agencies subject to Article 3A are occupational licensing agencies, the State Banking Commission and the Commissioner of Banks, the Credit Union Division, the Department of Insurance, the State Chief Information Officer in certain cases, the State Building Code Council, and the State Board of Elections in cases involving regulation of campaign contributions and expenditures. The Committee must report to the 2012 Session of the 2011 General Assembly.

Section 59. Provides that major developments subject to permitting under the Coastal Area Management Act are exempt from the Environmental Policy Act.

Section 60. Provides that certain environmental regulatory permits issued on or after July 1, 2011 shall be valid for up to 10 years. Currently, most permits expire after five years or less.

Section 61. Directs the Secretary of the Department of Environment and Natural Resources to develop uniform policy for notification of deficiencies and violations with differing notifications based on the level of potential harm. The Secretary is directed to report to the Legislative Environmental Review Commission by October 1, 2011, and to implement the plan by February 1, 2012.

Section 62. Severability clause.

EFFECTIVE DATE: Sections 2 through 15 of the act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided, the remainder of the act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 293
PROPOSED COMMITTEE SUBSTITUTE S293-CSTD-49 [v.2]

6/6/2011 8:29:14 PM

Short Title: Catawba Ecocomplex Renewable Energy. (Local)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF ECOCOMPLEX RENEWABLE ENERGY DEMONSTRATION PARKS IN CATAWBA COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings. – The General Assembly makes the following findings regarding the need for ecocomplex renewable energy demonstration parks:

(1) Economic development in the State will be served by providing an opportunity to convert orphaned or operating landfill facilities into ecocomplex renewable energy demonstration parks, thereby providing employment opportunities for the residents of North Carolina.

(2) The health and safety of the citizens of North Carolina will be served through the assessment and remediation of environmental conditions at State-permitted or orphan landfill facilities.

(3) The public interest of the State will be served by diversifying the resources used to reliably meet the energy needs of consumers in the State, providing greater energy security through the use of indigenous energy resources available within the State and encouraging private investment in renewable energy and energy efficiency.

(4) The public interest of the State will be served by encouraging owners of landfill facility property and owners of orphaned landfill property to convert solid waste into energy resources.

(5) The State and the public will directly benefit from the innovative approach utilized in applying the symbiotic relationships of Industrial Ecology to Solid Waste Management to further resolving pressing societal and environmental issues facing the State and its citizens.

(6) The public interest of the State will be served by the innovative nature of an ecocomplex renewable energy demonstration park as a model for future projects and for its ability to provide information on the risks and complexity associated with the development of renewable energy projects.

SECTION 2. Criteria for designation. – A parcel or tract of land, or any combination of contiguous parcels or tracts of land, that meet all of the following criteria may be designated as an ecocomplex renewable energy demonstration park:

(1) The park consists of at least 700 acres of contiguous property.

(2) The park property may be subdivided into or comprised of multiple tracts under multiple ownership that are homogeneous to the renewable energy industrial ecological symbiosis that defines the park where interdependent business relationships that are beneficial to all participants persist between the tracts.

(3) The owners of the park plan to attract at least 250 new jobs to the site.

(4) The owners of the park have an active solid waste facility permit with the Department of Environment and Natural Resources pursuant to Chapter 130A of the General Statutes.

(5) The creation of the park is for the purpose of featuring clean energy facilities, laboratories, and companies, thereby spurring economic growth by attracting renewable energy and alternative fuel industries.

(6) The development plan for the park must include at least three renewable energy or alternative fuel facilities.

(7) The development plan for the park must include a wood gasification renewable energy facility that utilizes unadulterated wood fuel derived from within the park or through the synergetic relationships fostered by the park.

(8) The wood gasification renewable energy facility will not be a major source, as that term is defined in 40 C.F.R. § 70.2 (July 1, 2009 edition), for air quality purposes. The biomass renewable energy facility will remain in compliance with all applicable State and federal emissions requirements throughout its operating life.

SECTION 3. Certification. – The owner of a parcel or tract of land or a group of owners of contiguous properties that seeks to establish an ecocomplex renewable energy demonstration park shall submit to the Secretary of State an application for designation. The Secretary shall examine the application and may request any additional information from the owner of the parcel(s) or tract(s) of land or the Department of Environment and Natural Resources needed to verify that the project meets all of the criteria for designation. The Secretary may rely on certifications provided by the owner or the Department of Environment and Natural Resources that the criteria are met. If the Secretary determines that the project meets all of the criteria, the Secretary shall make and issue a certificate to the owner(s) designating the parcel(s) or tract(s) of land as an ecocomplex renewable energy demonstration park and shall file and record the application and certificate in an appropriate book of record. The parcel(s) or tract(s) of land shall be designated as an ecocomplex renewable energy demonstration park on the date the certificate is filed and recorded.

SECTION 4. Renewable energy generation. – The definitions in G.S. 62-133.8 apply to this act. If the Utilities Commission determines that a biogas, syngas, or other biomass-derived renewable energy facility located in the ecocomplex renewable energy demonstration park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates generated from renewable energy resources at the biomass renewable energy facility that are purchased by an electric power supplier for the purposes of compliance with G.S. 62-133.8. The triple credit shall apply only to the first 20 megawatts of biogas, syngas, or other biomass-derived renewable energy facility generation capacity located in all ecocomplex renewable energy demonstration parks in the State.

SECTION 5. This act applies in Catawba County only.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 293:
Catawba Ecocomplex Renewable Energy

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2011
Introduced by:	Sen. Allran	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S293-CSTD-49		

SUMMARY: ***The PCS to Senate Bill 293 would authorize the establishment of ecocomplex renewable energy demonstration parks in Catawba County.***

CURRENT LAW: S.L. 2009-397 (commonly referred to as Senate Bill 3) established the North Carolina renewable energy and energy efficiency portfolio standard (REPS) in order to promote the development of renewable energy and energy efficiency in the State. The REPS requires electric power suppliers to use an increasing percentage of renewable energy resources and employ energy efficiency programs (12.5% by 2020) to meet the needs of the State's retail electricity customers. An electric power supplier could meet the REPS requirement by doing any one or more of the following:

- Generate electric power at a new renewable energy facility.
- Use a renewable energy resource to generate electric power at a generating facility.
- Reduce energy consumption through the implementation of an energy efficiency measure.
- Purchase electric power from a new renewable energy facility.
- Purchase renewable energy certificates (RECs) derived from in-state or out-of-state new renewable energy facilities.

The REPS requirement includes set-asides for the generation of energy from solar energy, swine waste, and poultry waste resources.

S.L. 2010-195 (Cleanfields Act of 2010) authorized the State to establish a cleanfields renewable energy demonstration park (cleanfields park).[1] Any electric power or RECs generated at a biomass renewable energy facility located in the cleanfields park that is purchased by an electric power supplier would be given triple credit. The triple credit would be applied as follows:

- Additional credits would first be applied to the poultry waste set-aside.
- Once the poultry waste-set aside has been fully satisfied, any remaining additional credits would be applied to the overall REPS requirements.

BILL ANALYSIS: The PCS to Senate Bill 293 would authorize the establishment of ecocomplex renewable energy demonstration parks in Catawba County. To be eligible for designation as a demonstration park, a parcel must meet the following criteria:

- Consist of 700 acres of contiguous property.
- Subdivided or comprised of multiple tracts under multiple ownership that are homogeneous to the renewable energy industrial ecological symbiosis that defines the park where

[1] SB484, currently in House Finance, would amend the application of the additional credits. The first 10 megawatts of additional generation capacity would be eligible for use to meet the requirements of the poultry waste set aside.

interdependent business relationships that are beneficial to all participants persist between the tracts.

- The owners of the park plan to attract at least 250 new jobs to the site.
- The owners of the park have an active solid waste facility permit with the Department of Environment and Natural Resources pursuant to Chapter 130A of the General Statutes.
- The creation of the park is for the purpose of featuring clean energy facilities, laboratories, and companies, thereby spurring economic growth by attracting renewable energy and alternative fuel industries.
- The development plan for the park must include at least three renewable energy or alternative fuel facilities.
- The development plan for the park must include a wood gasification renewable energy facility that utilizes unadulterated wood fuel derived from within the park or through the synergetic relationships fostered by the park.
- The wood gasification renewable energy facility will not be a major source, as that term is defined in 40 C.F.R. § 70.2 (July 1, 2009 edition), for air quality purposes. The biomass renewable energy facility will remain in compliance with all applicable State and federal emissions requirements throughout its operating life.

An owner may apply to the Secretary of State for certification as a cleanfields park, and the Secretary may rely on certifications from the owner and DENR that the project meets the requirements for certification. If the Secretary is satisfied that the project meets the requirements, the Secretary shall issue a certificate designating the parcel or tract of land as a cleanfields park to the owner and record the application and certificate in an appropriate book of record.

If the Utilities Commission determines that a biogas, syngas, or other biomass-derived renewable energy facility located in the cleanfields park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates (RECs) generated from renewable energy resources at the facility that are purchased by an electric power supplier for the purposes of compliance with the State's REPS requirements.

The triple credit shall apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State.

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

BACKGROUND: In Section 9.14 of the 2009 Appropriations Act (S.L. 2009-451), the General Assembly utilized a similar REC multiplier for a coastal wind energy demonstration project. The provision authorized the construction of up to three demonstration turbines in the sounds or off the coast of North Carolina and that for each REC generated by the turbines, The University of North Carolina would receive one REC and the third party (utility) would be deemed to have received the equivalent of three additional RECs for purposes of compliance with the State REPS requirements.

Jeff Hudson, substantially contributed to this summary.

S293-SMTD-75(CSTD-49) v1

SENATE BILL 533:
Individually Metered Units/Tenant Charged

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2011
Introduced by:	Sen. Hunt	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S533-CSTD-41		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 533 would authorize the Utilities Commission to adopt procedures to allow lessors of residential buildings to charge the actual costs of providing electric service to individual tenants in a unit, where the lessor has separate leases for each tenant in an individual unit, and makes other conforming changes.***

CURRENT LAW: A "public utility" as defined in G.S. 62-3(23) includes anyone who owns or operates equipment or facilities for "Producing, generating, transmitting, delivering, or furnishing electricity...to or for the public for compensation." Chapter 62 of the General Statutes requires a public utility to obtain a certificate of public convenience and necessity in order to provide service.

A growing trend in housing rentals, especially to college age students, is to provide individual leases to occupants of an individual rental unit. The rental unit has one meter for electric service, but the lease for each occupant of the unit provides for the separate collection of fees for electric service from each occupant of the rental unit.

In 1995, the General Assembly addressed a similar issue with the resale of water and sewer service by lessors to individuals that occupy the same premises by enacting G.S. 62-110(g) which authorizes the Utilities Commission to oversee lessors that charge for the costs of providing water and sewer service to tenants. The Commission has adopted rules regarding the sale of water and sewer service including the retention of records by the lessor, the rates that can be charged, and the administrative fees that can be charged.

Chapter 42 of the General Statutes provides the statutory framework for landlord tenant law in North Carolina.

G.S. 143-151.42 prohibits any building for which a building permit was issued on or after September 1, 1977, which includes two or more dwelling units, from have a master meter for electric and natural gas service. Each individual dwelling unit must have a separate electric meter and if applicable, a separate natural gas meter, so that each occupant can be responsible for conservation of electricity or gas. Hotels, hotels or motels that have been converted into condominiums motels, dormitories, rooming houses, or nursing homes or homes for the elderly are not subject to the prohibition.

BILL ANALYSIS: The PCS for Senate Bill 533 authorizes the Utilities Commission to adopt procedures to allow lessors of residential buildings to charge the actual costs of providing electric service to individual tenants in a unit, where the lessor has separate leases for each tenant in an individual unit, and makes other conforming changes.

Sections 1, 2, and 3: Makes conforming changes to Chapter 42 of the General Statutes to provide the following:

- The cost of electric service may be charged to tenants, but failure to pay for the electric service may not be used as a basis for terminating the lease.

- A lessor may charge for electric service, but may not terminate or disconnect a tenant's for nonpayment.
- Security deposits may be used for costs of electric service.

Section 4: Authorizes the Utilities Commission to adopt procedures to allow a lessor to charge individual tenants the cost of electric service. The unit must be separately metered and the individual tenants must have separate leases. The charges authorized must conform to the following:

- The lessor must equally divide the actual amount of the unit's bill for electric service among all the tenants in the unit. Charges must be prorated for tenants that have not leased the unit for the same number of days as other tenants in the unit during the billing period. An administrative fee and a late fee may be charged. The lessor may not charge the cost of service from other units or common areas in a tenant's bill. The lessor may pay any portion of a bill sent to a tenant.
- A lessor who charges for electric service is the considered the customer of the electric utility and is solely responsible for the payment of all bills rendered by the electric utility providing service to the residential building.
- The lessor shall maintain records of the allocation of electric costs amount tenants for a minimum of 36 months. A tenant may inspect the record and may obtain copies of the records for a reasonable copying fee.
- Bills for electric service sent by the lessor to the tenant must contain all of the following:
  - The amount of the bill for the unit and the amount allocated to the individual tenant.
  - Dates of the period the bill covers, and the date the meter was read.
  - The past-due date, which cannot be less than 25 days after the bill is mailed to the tenant.
  - A local or toll free number to call for more information regarding the bill.
  - The amount of any administrative or late fee.
  - A statement of the tenant's right to address questions, or seek recourse from the Commission.
- The Commission must develop an application for lessors to charge individual tenants the cost of electric service. The form must include certain information including a description of the billing method, proposed fees, the lessor's contact information, the name of the electric supplier to the rental units, copy of lease forms, and any additional information required by the Commission. The Commission must approve applications within 60 days; applications with no action for 60 days are deemed approved

Section 5: Amends the G.S. 143-151.42, which prohibits master meters for electric and natural gas service, to provide that the requirement for meters for an individual unit be in the name of a tenant does not apply for units of a lessor that has applied to the Commission to charge individual tenants the cost of electric service.

EFFECTIVE DATE: This act is October 1, 2011, and applies to leases entered into on or after that date.

S533-SMTD-74(CSTD-41) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 533
PROPOSED COMMITTEE SUBSTITUTE S533-CSTD-41 [v.5]

6/6/2011 5:10:46 PM

Short Title: Individually Metered Units/Tenant Charged. (Public)

Sponsors:

Referred to:

April 12, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE UTILITIES COMMISSION TO ADOPT PROCEDURES THAT ALLOW A LESSOR OF A RESIDENTIAL BUILDING OR COMPLEX HAVING INDIVIDUALLY METERED UNITS FOR ELECTRIC SERVICE IN THE LESSOR'S NAME TO CHARGE FOR THE ACTUAL COSTS OF PROVIDING ELECTRIC SERVICE TO EACH TENANT WHEN THE LESSOR HAS A SEPARATE LEASE FOR EACH BEDROOM IN THE UNIT, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-26(b) reads as rewritten:

"(b) An arrearage in costs owed by a tenant for water or sewer services pursuant to G.S. 62-110(g) or electric service pursuant to G.S. 62-110(g1) shall not be used as a basis for termination of a lease under this Chapter. Any payment to the landlord shall be applied first to the rent owed and then to charges for electric service, or water or sewer service, unless otherwise designated by the tenant."

SECTION 2. G.S.42.1 reads as rewritten:

"**§ 42-42.1. Water ~~Conservation.~~and Electricity Conservation.**

(a) For the purpose of encouraging water and electricity conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to ~~G.S. 62-110(g).~~G.S. 62-110(g), or electric service pursuant to G.S. 62-110(g1).

(b) The landlord may not disconnect or terminate the tenant's electric service or water or sewer services due to the tenant's nonpayment of the amount due for electric service or water or sewer services."

SECTION 3. G.S. 42-51 reads as rewritten:

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

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to ~~G.S. 62-110(g),~~ G.S. 62-110(g) and electric service pursuant to G.S. 62-110(g1), damage to the premises, nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall

not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

SECTION 4. G.S. 62-110 is amended by adding a new subsection to read as follows:

"**§ 62-110. Certificate of convenience and necessity.**

...

(g1) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of a residential building or complex that has individually metered units for electric service in the lessor's name to charge for the actual costs of providing electric service to each tenant when the lessor has a separate lease for each bedroom in the unit. The following provisions shall apply to the charges authorized under this subsection:

(1) The lessor shall equally divide the actual amount of the individual electric service bill for a unit among all the tenants in the unit and shall send one bill to each tenant. The amount charged shall be prorated when a tenant has not leased the unit for the same number of days as the other tenants in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then-current administrative fee authorized by the Commission in Rule 18-6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of electricity from any other unit or common area in a tenant's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a tenant.

(2) A lessor who charges for electric service under this subsection is solely responsible for the prompt payment of all bills rendered by the electric utility providing service to the residential building or complex and is the customer of the electric utility subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of electric service to retail customers of the utility.

(3) The lessor shall maintain records for a minimum of 36 months that demonstrate how each tenant's allocated costs were calculated for electric service. A tenant may inspect these records, including the actual per unit public utility billings, during reasonable business hours and may obtain copies of the records for a reasonable copying fee.

(4) Bills for electric service sent by the lessor to the tenant shall contain all of the following information:

a. The bill charged by the electric supplier for the unit as a whole and the amount of charges allocated to the tenant during the billing period.

b. The name of the electric power supplier providing electric service to the unit.

c. Beginning and ending dates for the usage period and, if provided by the electric supplier, the date the meter was read for that usage period.

d. The past-due date, which shall not be less than 25 days after the bill is mailed to the tenant.

e. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

f. The amount of any administrative fee and late fee approved by the Commission and included in the bill.

g. A statement of the tenant's right to address questions about the bill to the lessor, and the tenant's right to file a complaint with or otherwise seek recourse from the Commission if the tenant cannot resolve an electric service billing dispute with the lessor.

(5) The Commission shall develop an application that a lessor must submit for Commission approval to charge for electric service as provided in this section. The form shall include all of the following:

a. A description of the lessor and the property to be served.

b. A description of the proposed billing method and billing statements.

c. The administrative fee and late payment fee, if any, proposed to be charged by the lessor.

d. The name of and contact information for the lessor and the lessor's agents.

e. The name of and contact information for the supplier of electric service to the lessor's rental property.

f. A copy of the lease forms used by the lessor for tenants who are billed for electric service pursuant to this subsection.

g. Any additional information that the Commission may require.

(6) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 60 days, the application shall be deemed approved.

(7) A lessor who charges for electric service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36.

(8) The Commission shall adopt rules to implement the provisions of this subsection."

SECTION 5. G.S. 143-151.42 reads as rewritten:

"**§ 143-151.42. Prohibition of master meters for electric and natural gas service.**

(a) From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of

said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not apply to hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, or homes for the elderly.

(b) The provisions of this section requiring that service and meters for each individual dwelling unit be in the name of the tenant or other occupant of the apartment or other dwelling unit shall not apply in cases where the Utilities Commission has approved an application under G.S. 62-110(g1)."

SECTION 6. This act is effective October 1, 2011, and applies to leases entered into on or after that date.

SENATE BILL 587

Short Title:	Study ElectriCities Relief.	(Public)
Sponsors:	Senators Newton; Brunstetter, Daniel, Forrester, Goolsby, Jackson, Rabon, and Rouzer.	
Referred to:	Commerce.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT CREATING THE MUNICIPAL POWER AGENCY RELIEF LEGISLATIVE STUDY COMMITTEE TO STUDY OPTIONS TO ALLEVIATE THE DEBT INCURRED BY THE JOINT MUNICIPAL POWER AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Findings. – The General Assembly finds that the thirty-two municipalities in the North Carolina Eastern Municipal Power Agency (NCEMPA) division of ElecriCities owe more than two billion two hundred million dollars ($2,200,000,000) in bonded indebtedness; and the municipalities incurred the debt primarily to finance the building of nuclear power plants; and the municipalities own a percentage of the nuclear reactors located at the Shearon Harris Nuclear Plant and the Brunswick Power Plant; and the municipalities must charge their customers substantially higher electrical rates to finance this debt than the rates charged by other providers who service the surrounding areas; and the higher electrical rates impose a tremendous burden on the already challenged economies of these municipalities and the counties in which they are located.

SECTION 2.(a) Committee created. – There is created the Municipal Power Agency Relief Legislative Study Committee ("Committee"). The Committee shall consist of 12 members as follows:

(1) Six members of the Senate, appointed by the President Pro Tempore of the Senate.

(2) Six members of the House of Representatives, appointed by the Speaker of the House of Representatives.

SECTION 2.(b) The Committee shall:

(1) Study potential options to provide relief to customers of the joint municipal power agencies from high electric rates, including:
   a. The feasibility of refinancing or restructuring the debt of the power agencies.
   b. The feasibility of selling assets of the municipalities or the power agencies to lower electric rates or the total amount of debt.

(2) Study any other matters that the Committee deems relevant.

(3) Make a final report to the 2012 Regular Session of the 2011 General Assembly that includes findings, recommendations, and legislative proposals relating to its study.

SECTION 2.(c) The Committee shall terminate upon filing its final report.

SECTION 2.(d) Vacancies on the Committee shall be filled by the appointing authority. The Committee shall choose from among its membership a chair and two vice-chairs. A quorum of the Committee shall be nine members.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

The Committee may meet at any time upon call of the chairs. The Committee may meet in the Legislative Building or the Legislative Office Building. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

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

SENATE BILL 587:
Study ElectriCities Relief

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2011
Introduced by:	Sen. Newton	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 587 would authorize a Legislative Study Committee to study options to alleviate the debt incurred by the joint municipal power agencies.***

CURRENT LAW: Cities are authorized to operate public enterprises, including electric power generation, transmission, and distribution systems. The cities have the authority to set rates for the electric system. Because the cities are not considered public utilities under the statutes, the rates set by municipalities for the electric systems are not subject to review by the Utilities Commission.

Cites are also authorized to establish and operate electric power projects by formation of a joint agency for ownership of a project. These joint agencies are authorized to issue revenue bonds to finance the costs of a project. Two joint agencies have been formed under this authorization, North Carolina Municipal Power Agency No. 1 (NCMPA1) and North Carolina Eastern Power Agency (NCEMPA) were formed. NCMPA1 has 19 members; NCEMPA has 32 members; 19 other cities offer electric service but do not belong to either of the Municipal Power Agencies.

The NCMPA1 has a 75 percent ownership interest in Catawba Nuclear Station Unit 2. This plant is operated by Duke Power and located in York County, S.C. NCMPA1 also has an agreement with Duke that provides for electric power via McGuire Nuclear Station and Catawba Unit 1 should Catawba 2 be unavailable for service. The debt for the NCMPA1 as of January 2, 2011 is $1,541,085,000.

The NCEMPA owns interest in five generating units built and operated by Progress Energy. These facilities include three nuclear units, 2 units at the Brunswick Plant in Brunswick County, and 1 unit at Shearon Harris Plant in Wake County. The NCEMPA also owns an interest in two coal-fired plants in Person County. The debt for the NCEMPA as of January 2, 2011 is $2,254,510,000.

BILL ANALYSIS: Senate Bill 587 would authorize a Legislative Study Committee to study options to alleviate the debt incurred by the joint municipal power agencies. The Committee would consist of 12 members, 6 members of the Senate and 6 members of the House of Representatives.

The Committee shall study the options to provide relief to customers of the joint municipal power agencies, including the feasibility of refinancing or restructuring debt and the feasibility of selling assets to lower the total amount of debt.

The Committee shall make a final report to the 2012 Session of the 2011 General Assembly.

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

S587-SMTD-71(e1) v1

PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 6-7 TIME: 11 AM

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

Page Name	Hometown	Sponsoring Senator
1 Ashley Gorman	Greensboro	P. Berger
2 Bethany Spivey	Greensboro	P. Berger
3 Blythe Layne	Cary	R. Stevens
4 Jake Anthony	Raleigh	K. Harrington
5 Brad Yovanovich	Raleigh	K. Harrington
6		
7		
8		
9		
10		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh
[signature]	NCFA
J Goodmon	NC CHAMBER
Lisa Martin	NC Home Builders Assoc
Mann JA	(Smith Anderson)

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Eleanor Pridnage	SAS
Don McCorquodale	"
George Seidel	DBV
Will Morgan	NC Sierra
Richard Allen	Allen Law Offices, PLLC
Daniel Baum	Troutman Sanders
Janet Stevens	" "
Jon Carr	Jordan Price Law Firm
Frank Grainger	NCRLA
Colleen Kochanek	AANC
Bob Ford	NC Poultry Fed

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 7, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steve Brewer	CTL
Doug Miskew	PSG
[signature]	NCUC
Kevin Hodge	NCUC
Preston Howard	MCIC
[signature]	NCAEC
John Harris	NCGA
[signature]	CAUC
William Zeke Creech	DOA
BRIAN ZUERCHER	SAS
Barbara Carson	BBC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dan Conrad	NCCN
[illegible]	BSA
[illegible]	Electricities
Tom Tunis	ElectriCities
Steve Shelton	ElectriCities
Graham Edwards	"
Drew Saunders	"
[illegible]	ElectriCities
[illegible]	" "
Michelle Frazier	MFRS
[illegible]	MWC
Kathy Hawkins	Duke
Bruce Thomson	Parker Poe
Jack Cozart	Cardinal Co

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Betsy Blackwell	UNC Kenan Institute
DAVID BARNES	PS
Patrick Buffkin	NCACC
Franklin Robinson	NCRMA
Allison Waller	Nelson Mullins
Drew Maretz	Raleigh Chamber
Rick Zechini	Progress NRG
Rose Williams	NCDOT
David Drez	Public Staff
Dianna Downey	Public Staff
Daniel Raimi	DENR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kimberly Reynolds	Lt. Govs Office
Heather Barrett	Williams Mullen
Sushma Masemore	DENR
Mia Bailey	Electricities
Joyce Peters	JPAssoc
KEN RABER.	ELECTRICITIES.
Sharon Miller	CUCA
MICHELLE HEALY	SMITH ANDERSON
Margaret Hartzell	Environment North Carolina
Molly Diggins	Sierra Club
My Made Ashly	SELC

SENATE COMMERCE COMMITTEE
Wednesday, June 8, 2011 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on June 8, 2011 in room 1027 of the Legislative Building. Addie Griffin of Louisburg, Ben Hinson of Lexington, Vincent Ragland of Henderson, and Corinne May, Jake Anthony and Brad Yovanovich of Raleigh served as pages. Twenty-seven members of the committee were present. Senator Brown presided as chair.

S.B. 507 – Clarify Exception/Real Estate Broker Laws

Senator Hunt was recognized to explain the bill. Senator Hise moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. It clarifies an existing exemption under the Real Estate Broker Licensing laws. Cady Thomas, a lobbyist for the NC Association of Realtors, was recognized to speak in favor of the bill. Senator Jackson moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 683 – Residential Building Inspections

Senator Hunt explained the bill and Senator Hise moved to adopt the PCS for discussion. The motion carried. The PCS prohibits cities or counties from making periodic inspections of residential real property only if there is reasonable cause. It allows periodic inspections as part of a targeted effort in a geographic area provided the owners and residents are given notice, the city or county holds a public hearing, and establishes a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. It also prohibits cities and counties from requiring owners of residential rental property from obtaining a permit, enroll in a program, or levy a special fee. A city or county may charge a fee for rental property registration for properties that have been found to be in violation of local ordinance within the last 12 months. Since the PCS authorizes a fee, the bill will have to be re-referred to Senate Finance. Beth McKee-Huger, Greensboro Housing Coalition, was recognized to speak in opposition. Thomas Crowder, Raleigh City Council, and Ken Semanski, Charlotte City Council, were recognized to speak in opposition to the bill. Will Bramley and John Lawder, Triad/Piedmont Apartment Association, were recognized to speak in favor of the bill. Maribelle Peyton, Vice Chair to Raleigh's Southwest Advisory Council, was recognized to speak in opposition. Rick Hester, Durham Housing Authority Director, was recognized to speak in opposition and answer questions. Larissa Siebel, Durham Affordable Housing Coalition, spoke in opposition and Cady Thomas, a lobbyist for the NC Association of Realtors, was recognized to speak in favor of the bill. Senator Newton moved for a favorable report with a referral to the Senate Finance Committee and the motion carried. A copy of the PCS and the summary is attached.

S.B. 708 – Improve Enforcement/General Contractor Laws

Senator Hise was recognized to explain the bill and Senator Jackson moved to adopt the PCS for discussion. The motion carried. The PCS provides that certain rules adopted by the Building Code Council become effective January 1, 2012. Senator Hise was recognized to offer a technical amendment which corrected a date. Senator White moved for its adoption and the motion carried. Lisa Martin, Director of Government Affairs for the NC Homebuilders Association, and Julie White, a lobbyist with the NC League of Municipalities, were recognized to speak in favor of the bill. Senator Goolsby moved for a favorable report. The motion carried. A copy of the PCS, the amendment, and the summary is attached.

The meeting adjourned at 9:39 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Wednesday, June 08, 2011

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

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

S.B. **507** Clarify Exception/Real Estate Broker Laws.

Draft Number:	55309
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **683** Residential Building Inspections.

Draft Number:	35261
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:
S507 – Sen. Hunt
S683 – Sen. Hunt

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Wednesday, June 08, 2011

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

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

S.B. **708** Improve Enforcement/General Contractor Laws.

Draft Number:	35272
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:
S708 – Sen. Hise

Senate Commerce Committee
Wednesday, June 8, 2011, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 507	Clarify Exception/Real Estate Broker Laws.	Senator Hunt
SB 683	Residential Building Inspections.	Senator Hunt
SB 708	Improve Enforcement/General Contractor Laws.	Senator Hise Senator White Senator Tucker
SB 781	Regulatory Reform Act of 2011.	Senator Rouzer Senator Brown

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 507
PROPOSED COMMITTEE SUBSTITUTE S507-PCS55309-RC-35

Short Title: Clarify Exception/Real Estate Broker Laws. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT OFFICERS AND EMPLOYEES OF A PERSON OR BUSINESS ENTITY WHO PERFORMS REAL ESTATE BROKER ACTS AS RELATED TO PROPERTY OWNED OR LEASED BY THE PERSON OR BUSINESS ENTITY ARE EXEMPT FROM THE REQUIREMENTS OF LICENSURE UNDER THE LAWS REGULATING REAL ESTATE BROKERS AND SALESPERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-2(c)(1) reads as rewritten:

"(c) The provisions of ~~this Chapter~~ G.S 93A-1 and G.S. 93A-2 do not apply to and do not include:

(1) Any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to officers and employees of an exempt corporation, the general partners of an exempt partnership, and the managers of an exempt limited liability company when said persons are engaged in acts or services for which the corporation, partnership, or limited liability company would be exempt hereunder."

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

SENATE BILL 507:
Clarify Exception/Real Estate Broker Laws

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2011
Introduced by:	Sen. Hunt	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S507-CSRC-35		

SUMMARY: ***The PCS for SB 507 clarifies an existing exemption under the Real Estate Broker Licensing laws.***

CURRENT LAW: Chapter 93A of the North Carolina General Statutes governs the licensure of Real Estate Brokers. A real estate broker is any person, partnership, corporation, limited liability company, association, or other business entity who for compensation or valuable consideration does any of the following for others:

- lists or offers to list,
- sells or offers to sell,
- buys or offers to buy,
- auctions or offers to auction (specifically not including a mere crier of sales),
- negotiates the purchase or sale or exchange of real estate,
- who leases or offers to lease,
- who sells or offers to sell leases of whatever character,
- rents or offers to rent any real estate or the improvement thereon.

There are a number of exceptions to the licensure provisions. One of those is contained in G.S. 93A-2(c)(1) which exempts any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein.

BILL ANALYSIS: The PCS amends G.S. 93A-2(c)(1) to clarify that the exemption extends to officers and employees of an exempt corporation, the general partners of an exempt partnership, and the managers of an exempt limited liability company when those persons are engaged in acts for which the entities would be exempt.

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

BACKGROUND:

S507-SMRC-48(CSRC-35) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 683
PROPOSED COMMITTEE SUBSTITUTE S683-PCS35261-RC-36

Short Title: Residential Building Inspections. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:

"**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. ~~In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building.~~ In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a county do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or

permission from the county to lease or rent residential real property; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties except that the county may levy a fee for rental property registration on those properties which have been found in violation of local ordinances within the previous 12 months. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas."

SECTION 2. G.S. 160A-424 reads as rewritten:

"**§ 160A-424. Periodic inspections.**

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. ~~In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure.~~ In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real property; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties except that the city may levy a fee for rental property registration on those properties which have been found in violation of local ordinances within the previous 12 months. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas."

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

SENATE BILL 683:
Residential Building Inspections

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2011
Introduced by:	Sen. Hunt	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S683-CSRC-36		

SUMMARY: ***SB683 would prohibit cities or counties from making periodic inspections of residential real property only if there is reasonable cause. It allows periodic inspections as part of a targeted effort in a geographic area provided the owners and residents are given notice, the city or county holds a public hearing, and establishes a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. It also prohibits cities and counties from requiring owners of residential rental property from obtaining a permit, enroll in a program, or levy a special fee. A city or county may charge a fee for rental property registration for properties that have been found to be in violation of local ordinance within the last 12 months.***

The PCS authorizes a fee, so the bill will have to be re-referred to Senate Finance.

CURRENT LAW: Cities and counties may currently make periodic inspections for unsafe, unsanitary or otherwise hazardous and unlawful conditions in buildings within their territorial jurisdiction. Inspections are also allowed if there is reason to believe that those conditions exist in a particular structure. Members of the inspection department have the authority to enter any premises at reasonable time for the purpose of the inspection, but must provide proper credentials.

BILL ANALYSIS:

Sections 1 and 2 make identical amendments to companion statutes in Chapters 160A (Counties) and 153A (Cities) related to inspections of real property. The PCS limits the authority to inspect residential real property to situations where there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions exist. The term "reasonable cause" is defined as any of the following:

- There is a history of at least 2 housing ordinance or code violations within the last 12 months,
- A complaint has been filed alleging substandard conditions.
- The inspection department has actual knowledge of an unsafe condition.
- A violation of local codes or ordinances is visible from the outside of the building.

Periodic inspections are permitted as part of a targeted effort within a geographic area. The city or county shall not discriminate in its selection of properties and must do all of the following:

- Provide notice to owners and residents
- Hold a public hearing
- Adopt a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

A city or county may not do any of the following:

- Require an owner or manager of rental property to obtain a permit or permission to lease residential real property.

- Require the owner to participate in a program as a condition of obtaining a certificate of occupancy.
- Levy a fee or tax on residential rental property that is not also levied against other commercial and residential properties.

A city or county may levy a fee for rental property registration on properties that have been found to be in violation of a local ordinance in the last 12 months.

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

S683-SMRC-49(CSRC-36) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 708*
PROPOSED COMMITTEE SUBSTITUTE S708-CSRO-20 [v.4]

6/7/2011 9:47:09 PM

Short Title: Building Code Rules/ Effective Dates. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO RECONCILE THE EFFECTIVE DATES OF CERTAIN RULES ADOPTED BY THE BUILDING CODE COUNCIL RELATED TO THE 2012 ENERGY CONSERVATION CODE AND THE 2012 NC RESIDENTIAL CODE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 150B-21.3, or any other provision of law, if approved by the Rules Review Commission, the following rules adopted by the Building Code Council on April 22, 2011, shall become effective January 1, 2012.

2012 NC Fire Code – Appendices 101.2.1;
2012 NC Residential Code – Egress Door R311.2;
2012 NC Residential Code – Minimum Width of Footings Table R403.1;
2012 NC Residential Code – Concrete Masonry Foundation Details Figure R 403.3(1);
2012 NC Residential Code – Foundation Vent Sizing R408.1.1;
2012 NC Residential Code – Ground Vapor Retarder R408.2;
2012 NC Residential Code – Framing Details R802.3;
2012 NC Residential Code – Attic Access R807.1.

SECTION 2. Notwithstanding G.S. 150B-21.3, or any other provision of law, the 2012 North Carolina Energy Conservation Code, as adopted by the Building Code Council on December 14, 2010, and approved by the Rules Review Commission on February 17, 2011, and the 2012 North Carolina Residential Code, as adopted by the Building Code Council on December 14, 2010, and approved by the Rules Review Commission on March 17, 2011, shall take effect on January 1, 2012, with a mandatory compliance date of March 1, 2012.

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

SENATE BILL 708:
Building Code Rules/Effective Date.

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 8, 2011
Introduced by:	Sens. Hise, Tucker, White	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S708-CSRO-20		

SUMMARY: ***The PCS for Senate Bill 708 would provide that certain rules adopted by the Building Code Council would become effective January 1, 2012.***

BILL ANALYSIS:

Section 1: The PCS for Senate Bill 708 would provide that the following rules adopted by the Building Code Council will become effective January 1, 2012, if approved by the Rules Review Commission:

2012 NC Fire Code – Appendices 101.2.1;
2012 NC Residential Code – Egress Door R311.2;
2012 NC Residential Code – Minimum Width of Footings Table R403.1;
2012 NC Residential Code – Concrete Masonry Foundation Details Figure R 403.3(1);
2012 NC Residential Code – Foundation Vent Sizing R408.1.1;
2012 NC Residential Code – Ground Vapor Retarder R408.2;
2012 NC Residential Code – Framing Details R802.3;
2012 NC Residential Code – Attic Access R807.1.

Section 2: The PCS for Senate Bill 708 would provide that the following rules will take effect January 1, 2012, with a mandatory compliance date of March 1, 2012:

- The 2012 North Carolina Energy Conservation Code, as adopted by the Building Code Council on December 14, 2010, and approved by the Rules Review Commission on February 17, 201.
- The 2012 North Carolina Residential Code, as adopted by the Building Code Council on December 14, 2010, and approved by the Rules Review Commission on March 17, 2011,

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

S708-SMTD-82(CSRO-20) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 708*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S708-ATD-108 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
A708-CSRO-20

Date June 8 ,2011

Senator Hise

moves to amend the bill on page 1, line 8, by deleting the phrase "April 22, 2011" and substituting the phrase "April 21, 2011".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027

DATE: 6-8 **TIME:** 9 AM

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

age	Name	Hometown	Sponsoring Senator
1	Addie Griffin	Louisburg	D. Berger
2	Ben Hinson	Lexington	Bingham
3	Vincent Ragland	Henderson	D. Berger
4	Corinne May	Raleigh	Nesbitt
5	Jake Anthony	Raleigh	Harrington
6	Brad Jovanovich	Raleigh	Harrington
7			
8			
10			

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Lynch	NCBH
David McGowan	NC Realtors
Rick Zechini	Progress Energy
Lew Ebert	NC Chamber
W. Dan Gill	NLC + HCSO
Will Ramy Hill	NCHFA
Spurr Rhyne	DOR
David Crawford	AIA/C
Doug Hirsch	NM
Jon Hall	ABCC
Evelyn Hawkins	DTOR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rachel House	NMSS-NC
Michelle Hoang	Smith Anderson
Robin Johnson	NCASA
Devin Simmonds	DRNC
Hunt Harris	NMSS-NC
Cliff Webster, Jr.	Raleigh Resident
Cheryl Hausman	Triangle Apt. Assoc.
Jaime King	NCEL
Andrew Meeha	Capstrat
Marlene Sanford	TREBIC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bobby Bryan	RRC
Dave Simpkins	CAUC
JOE DELUCA	OAH - RRC
Margaret Hartzell	Environment North Carolina
Bill Rowe	NC Justice Center
Cyndi Karoly	NC DWQ
Karen Higgins	NC DWQ
Susan Passmore	Apartment Association of NC
Rick Hester	City of Durham
J Goodman	NC Chamber
Molly Diggins	Sierra Club
Rob Hamer	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
P Howard	MCIC
L C Pengra	CSS
Kathy Hawkins	Duke Energy
George Everett	Duke Energy
Bob Bowman	NCFA
Peter Daniel	NCDA Farm Bureau
Paula Page	NC Farm Bureau
CHRIS DILLON	NC WRC
MaryNelle Smith	GSO Housing Coalition
Beth McKee-Huger	Greensboro Housing Coalition
Carley Ruff	NC Housing Coalition
Kellie Falk-Tillett	Drucker & Falk

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 8, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Natalie Lavinew	NCDOL
Dianna Downey	PSNCUC
Patti C Baggett	NCAEC
Mean Ludden	PBV
Cody Thomas	NCAR
Bob Leary	Indy week
Amy Baum	NCACC
Ray Stanley	NCDA&CS
Will Brownlee	TAA/AANC
JON LOWDER	PTAA
Molly Masich	NC OAH

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCMMC
John Boardwick	AstraZeneca
Barbara Canslu	BSGR
Dana Fenton	City of Charlotte
Colleen Kochanek	AANC
DANIEL BAUM	TROUTMAN SANDERS
Kevin Hodge	NCUC
Will Morgan	Sierra Club
Jess Hays	NCWBA
Lisa Martin	
ROBERT PRIDDY	NCHSA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Creech, William Zeke	DOA
Daniel Blaine	DENR
Kari Barsness	DENR
Veronica Butcher Shingleton	Office of Governor
Dan Conrad	NCCN
Julie Robinson	NCSEA
Chad Ray	Olde Heritage Builders
DAN CRAWFORD	NCLCV
Mary Maclea Abell	SELC
Tom BEAN	NCSEA, EDF
Abby Emanuelson	NMSS-NC

SENATE COMMERCE COMMITTEE
Wednesday, June 8, 2011 at 8:45 PM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 8:45 PM on June 8, 2011 in room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator Brown presided as chair.

S.B. 781 – Regulatory Reform Act of 2011

Senator Newton moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Senator Rouzer was recognized to explain the PCS and answer questions. The bill increases regulatory efficiency in order to balance job creation and environmental protection. The PCS makes the following changes to the bill: Section 1. Adds language to clarify that the new provision only applies to policies that fit the definition of a rule, Section 2. Deletes sentence giving authority to OSBM in G.S. 150B-19.2 and adds the pesticide Board to enumerated agencies under G.S. 150B-19.3, Sections 22 and 25. Restores reference to persons aggrieved as having authority to seek judicial review. Section 27. Amends G.S. 150B-51(c) to clarify the standard of judicial review of final decisions made by ALJs, Section 55.1. New section directing DHHS to seek a waiver for final decisions made by OAH, Section 56. Modifies the process to be used by an agency in response to a request for a declaratory ruling, Section 60. Extends term of permits to 8 years rather than 10, Section 61.1. New section directing the OAH to evaluate the use of mediated settlement conferences, develop a plan to expand the use of such conferences, and report to Joint Regulatory Reform committee by February 1, 2012, and Section 61.2. New section which repeals SB 22. Karen Cochrane-Brown, a staff attorney with the Research Division, was recognized to further explain the bill and answer questions. Senator Jackson moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 9:04 PM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Wednesday, June 08, 2011

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

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

S.B. **781** Regulatory Reform Act of 2011.

Draft Number:	75183
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 781*
PROPOSED COMMITTEE SUBSTITUTE S781-CSRO-24 [v.3]

6/8/2011 7:23:08 PM

Short Title: Regulatory Reform Act of 2011. (Public)

Sponsors:

Referred to:

June 6, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB CREATION AND ENVIRONMENTAL PROTECTION.

The General Assembly of North Carolina enacts:

PART I. RULE MAKING

SECTION 1. G.S. 150B-18 reads as rewritten:

"**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article."

SECTION 2. Article 2A of Chapter 150B is amended by adding three new sections to read:

"**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.

(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.

(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.

(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.

(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

SECTION 60.(c) G.S. 143-215.1 is amended by adding a new subsection to read:

"(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term of eight years."

SECTION 60.(d) The Department of Environment and Natural Resources shall review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 60.(e) This section is effective when this act becomes law and applies to permits that are issued on or after July 1, 2011.

SECTION 61. The Secretary of Environment and Natural Resources shall develop a uniform policy for notification of deficiencies and violations for all of the regulatory programs within the Department of Environment and Natural Resources. In developing the notification policy, the Secretary shall establish different types of notification based on the potential or actual level of harm to public health, the environment, and the natural resources of the State. The Secretary shall also review the notification policies of the United States Environmental Protection Agency and the environmental regulatory programs of other states. The Secretary shall report on the development of the notification policy to the Environmental Review Commission and the Joint Select Regulatory Reform Committee no later than October 1, 2011. The Secretary shall implement the uniform notification policy no later than February 1, 2012.

SECTION 61.1. The Office of Administrative Hearings shall evaluate the use of mediated settlement conferences under G.S. 150B-23.1 and shall develop a plan to expand the use of mediation in the contested case process. The Office of Administrative Hearings shall report its findings and recommendations to the Joint Legislative Regulatory Reform Committee by February 1, 2012.

SECTION 61.2. S.L. 2011-13 is repealed..

SECTION 62. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 63. Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided elsewhere in this act, this remainder of this act is effective when it becomes law.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the following:

(1) The text of a proposed rule.

(2) An explanation of the proposed rule and the reason for the proposed rule.

(3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule.

(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body must approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1); the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

"**§ 150B-19.2. Review of existing rules.**

(a) The Rules Modification and Improvement Program. – The Rules Modification and Improvement Program is established to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification and Improvement Program. The OSBM shall invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must identify a specific rule or regulatory program and may include recommendations regarding

modifying, expanding, or repealing existing rules or changing the rule review and publication process. The OSBM shall direct each agency to conduct an internal review of its rules as required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM shall assemble and evaluate the public comments and forward any comments it deems to have merit to the appropriate agency for further review. Agencies shall review the public comments and prepare a report on whether any of the recommendations contained in the comments have potential merit and justify further action. Agencies shall submit a report of their findings to the OSBM by January 31 of each year. The OSBM shall publish an annual report by April 30 of each year summarizing all public comments and resulting actions taken or planned.

(b) The OSBM shall establish a single Web portal dedicated to receiving public comments and tracking agency progress on reforming rules.

"**§ 150B-19.3. Limitation on certain environmental rules.**

(a) An agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

(2) The Environmental Management Commission created pursuant to G.S. 143B-282.

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining Commission created pursuant to G.S. 143B-290.

(9) The Pesticide Board created pursuant to G.S. 143-436."

SECTION 3. G.S. 150B-21(f) is repealed.

SECTION 4. G.S. 150B-21.1(a3) reads as rewritten:

"(a3) Unless otherwise provided by law, ~~at least 30 business days prior to adopting a temporary rule,~~ the agency shall:

(1) ~~Submit~~ At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) ~~Notify~~ At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published."

SECTION 5. G.S. 150B-21.2 reads as rewritten:

"**§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:
(1) Publish a notice of text in the North Carolina Register.
(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:
(1) The text of the proposed rule.
(2) A short explanation of the reason for the proposed ~~rule.~~ rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
(3) A citation to the law that gives the agency the authority to adopt the rule.
(4) The proposed effective date of the rule.
(5) The date, time, and place of any public hearing scheduled on the rule.
(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public

hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. – An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule."

SECTION 6. G.S. 150B-21.4 reads as rewritten:

"**§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the ~~Director of the Budget~~ Office of State Budget and Management and obtain certification from the ~~Director~~ Office that the funds that would be required by the proposed rule change are available. The Office must also determine and certify

that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The ~~Director of the Budget~~ Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of ~~the Governor~~ State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, ~~the Office of State Budget and Management,~~ the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency ~~must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or~~ shall prepare a fiscal note for the proposed rule change and have the note approved by ~~that Office.~~ the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least ~~three million dollars ($3,000,000)~~ five hundred thousand dollars ($500,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

(1) Determine and identify the appropriate time frame of the analysis.

(2) Assess the baseline conditions against which the proposed rule is to be measured.

(3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.

(4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.

(5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(b2) Content. – A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.

(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.

(3) A description of the purpose and benefits of the proposed rule change.

(4) An explanation of how the estimate of expenditures was computed.

(5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.

(c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity of a rule."

SECTION 7. G.S. 150B-21.11 reads as rewritten:

"**§ 150B-21.11. Procedure when Commission approves permanent rule.**

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval, and deliver the approved rule to the Codifier of ~~Rules, and include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee.~~ Rules.

If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule."

SECTION 8. G.S. 150B-21.12(d) reads as rewritten:

"(d) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its ~~action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee.~~ action. If the rule that is returned would have increased or decreased

expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule."

SECTION 9. G.S. 150B-21.16 is repealed.

SECTION 10. G.S. 150B-21.17(a) reads as rewritten:

"(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.

(1a) The text of proposed rules and the text of permanent rules approved by the Commission.

(1b) Emergency rules entered into the North Carolina Administrative Code.

~~(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.~~

(3) Executive orders of the Governor.

(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.

~~(5) Orders of the Tax Review Board issued under G.S. 105-241.2.~~

(6) Other information the Codifier determines to be helpful to the public."

SECTION 11. G.S. 150B-21.18 reads as rewritten:

"**§ 150B-21.18. North Carolina Administrative Code.**

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means.~~ The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules."

SECTION 12. G.S. 150B-21.21(b) reads as rewritten:

"(b) Exempt Agencies. – ~~Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.~~

Notwithstanding ~~G.S. 150B-1,~~ any other provision of law, an agency ~~other than the Utilities Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule."

SECTION 13. G.S. 150B-21.23 is repealed.

SECTION 14. G.S. 150B-21.26 reads as rewritten:

"Part 5. Rules Affecting Local Governments.

"**§ 150B-21.26. ~~Governor~~ Office of State Budget and Management to conduct preliminary review of certain administrative rules.**

(a) Preliminary Review. – At least ~~30~~ 60 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the ~~Governor~~ Office of State Budget and Management for preliminary review:

(1) The text of the proposed rule change.

(2) A short explanation of the reason for the proposed change.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The ~~Governor's~~ preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.

(2) Any unanticipated effects of the proposed change on local government budgets.

(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

PART II. CONTESTED CASES

SECTION 15. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

SECTION 16. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this ~~Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the~~

~~local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.~~Article."

SECTION 17. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...

~~(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision.~~"

SECTION 18. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Decision of administrative law judge.~~Final decision or order.**

(a) ~~Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in~~ In each contested case the administrative law judge shall make a final decision or order that contains findings of fact and conclusions of ~~law and return the decision to the agency for a final decision in accordance with G.S. 150B-36.~~law. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. ~~All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).~~

(b) Repealed by Session Laws 1991, c. 35, s. 6.

~~(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.~~

(d) Except for the exemptions contained in ~~G.S. 150B-1(c) and (e), and subsection (c) of this section,~~G.S. 150B-1, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges.

(e) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56."

SECTION 19. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

SECTION 20. G.S. 150B-36 is repealed.

SECTION 21. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25.

(6) The administrative law judge's ~~decision,~~ final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the~~ administrative law judge's final decision to each party."

SECTION 22. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any ~~person~~ party ~~who is~~ or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party or person aggrieved from invoking any judicial remedy available to ~~him~~ the party or person aggrieved under the law to test the validity of any administrative action not made reviewable under this Article."

SECTION 23. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the~~

~~agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~or by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section."

SECTION 24. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

SECTION 25. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party or person aggrieved who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a final decision ~~of the administrative law judge or final decision~~ shall be made part of the official record."

SECTION 26. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

SECTION 27. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope and standard of review.**

~~(a) In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence in the official record. Second, if the applicable appointing authority did not adopt the~~

~~recommended decision, the court shall determine whether the applicable appointing authority's decision states the specific reasons why the applicable appointing authority did not adopt the recommended decision. If the court determines that the applicable appointing authority did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

~~(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.~~

(b) ~~Except as provided in subsection (c) of this section, in reviewing a final decision, the~~The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case ~~to the agency or to the administrative law judge~~ for further proceedings. It may also reverse or modify the ~~agency's decision, or adopt the administrative law judge's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;

(2) In excess of the statutory authority or jurisdiction of the ~~agency;~~ agency or administrative law judge;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested ~~case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.~~case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the de novo standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

(d) In reviewing a final ~~agency~~ decision allowing judgment on the pleadings or summary judgment, ~~or in reviewing an agency decision that does not adopt an administrative~~

~~law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d),~~ the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just."

SECTION 28. G.S. 7A-759(e) reads as rewritten:

"(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36, an~~ An order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules."

SECTION 29. G.S. 74-58(b) reads as rewritten:

"(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until ~~the Commission makes~~ issuance of a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon an action for injunctive relief."

SECTION 30. G.S. 74-61 reads as rewritten:

"**§ 74-61. Administrative and judicial review of decisions.**

An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

SECTION 31. G.S. 74-85 reads as rewritten:

"**§ 74-85. Administrative and judicial review of decisions.**

Any affected person may contest a decision of the Department to approve, deny, suspend, or revoke a permit, to require additional abandonment work, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

SECTION 32. G.S. 108A-70.9A(f) reads as rewritten:

"(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision ~~and record~~ to the Department in accordance with ~~G.S. 108A-70.9B.~~ G.S. 150B-37. The Department shall ~~make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly~~ notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 33. G.S. 108A-70.9B(g) reads as rewritten:

"(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. ~~OAH shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~ The judge shall prepare a written decision and send it to the ~~parties.~~ parties in accordance with G.S. 150B-37. ~~The decision shall be sent together with the record to the agency within 20 days of the conclusion of the hearing.~~"

SECTION 34. G.S. 113-171(e) reads as rewritten:

"(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final ~~decision by the Secretary.~~ decision."

SECTION 35. G.S. 113-202 reads as rewritten:

"**§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.**

...

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

...

(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate a contested case, or the ~~Secretary's~~ final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the ~~Secretary's~~ final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

...."

SECTION 36. G.S. 113-229(f) reads as rewritten:

"(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case

or the ~~Commission makes~~ issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit."

SECTION 37. G.S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

(1) Has alleged that the decision is contrary to a statute or rule;

(2) Is directly affected by the decision; and

(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final ~~Commission~~ decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case."

SECTION 38. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than one thousand dollars ($1,000) for a minor development violation and ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

...

(3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final ~~agency~~ decision was served on the violator.

...."

SECTION 39. G.S. 122C-24.1(h) reads as rewritten:

"(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in ~~G.S. 150B-36.~~ G.S. 150B-37."

SECTION 40. G.S. 122C-151.4(f) reads as rewritten:

"(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. ~~The Secretary shall make a final decision in the contested case.~~"

SECTION 41. G.S. 126-4.1 is repealed.

SECTION 42. G.S. 126-14.4(e) reads as rewritten:

"(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate ~~recommended remedy.~~ remedy, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter."

SECTION 43. G.S. 126-14.4(f) is repealed.

SECTION 44. G.S. 126-37 reads as rewritten:

"**§ 126-37. ~~Personnel Commission to review~~ Administrative Law Judge's ~~recommended decision and make~~ final decision.**

(a) Appeals involving a disciplinary action, alleged discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section.~~ The ~~State Personnel Commission~~ administrative law judge is hereby authorized to reinstate any employee to the position from which the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.

(b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

~~(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.~~

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable

federal standards shall be heard as all other ~~appeals, except that the decision of the State Personnel Commission shall be final.~~ appeals.

(c) If the local appointing authority is other than a board of county commissioners, the local appointing authority must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

SECTION 45. G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the penalty be adjusted accordingly."

SECTION 46. G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

(1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.

(2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.

(3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.

(4) The administrative law judge or hearing officer shall make ~~his recommended~~ a final decision within 75 days after the hearing.

~~(5) The Department shall make its final decision within 30 days of receiving the official record of the case from the Office of Administrative Hearings.~~

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension.~~"

SECTION 47. G.S. 131F-5(b) reads as rewritten:

"(b) Departmental Review. – The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal."

SECTION 48. G.S. 131F-15(e) reads as rewritten:

"(e) Departmental Review. – The Department shall examine each application or renewal filed by a fund-raising consultant and determine whether the requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the fund-raising consultant within 10 days after its receipt of the application or renewal. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the license requirements are not satisfied, the applicant may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal."

SECTION 49. G.S. 135-44.7(c) is repealed.

SECTION 50. G.S. 143-215.22L(o) reads as rewritten:

"(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes."

SECTION 51. G.S. 143-215.94E(e3) reads as rewritten:

"(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case

filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision in a contested case proceeding under this subsection.~~"

SECTION 52. G.S. 143-215.94U(e) reads as rewritten:

"(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision regarding the revocation of a permit under this section.~~"

SECTION 53. G.S. 143-215.104P(d) reads as rewritten:

"(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision regarding assessment of a civil penalty under this section.~~"

SECTION 54. G.S. 143-215.104S reads as rewritten:

"**§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. ~~The Commission shall make the final agency decision in contested cases initiated pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency decision pursuant to this section.~~"

SECTION 55. G.S. 153A-223 reads as rewritten:

"**§ 153A-223. Enforcement of minimum standards.**

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final ~~agency~~ decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary or a final decision to the senior resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order or the final decision is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The ~~Secretary,~~ Office of Administrative Hearings, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order."

SECTION 55.1. Pursuant to 31 U. S.C. §6504, the Department of Health and Human Services shall request a waiver from the single State agency requirement contained in 42 CFR 432.10(e)(3), with regard to final decisions in administrative hearings. The waiver application shall include the following:

(1) The waiver request is made at the direction of the North Carolina General Assembly which is responsible for the organizational structure of State government.

(2) The single State agency requirement prevents the establishment of the most effective and efficient arrangement for providing administrative hearings to claimants because it requires that after a hearing and decision by an administrative law judge, the case must be returned to the agency for a final decision. The return to the agency is an unnecessary, time consuming, and costly additional step.

(3) The use of another State administrative hearings arrangement will not endanger the objectives of the law authorizing the Medicaid program because the administrative law judges will abide by the properly adopted

policies, rules, and regulations of the State Medicaid agency in making final decisions."

PART III. MISCELLANEOUS ISSUES

SECTION 56. G.S. 150B-4 reads as rewritten:

"**§ 150B-4. Declaratory rulings.**

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the ~~agency, except when the agency for good cause finds issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. ~~A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

(a1) An agency shall respond to a request for declaratory ruling as follows:

(1) Within 30 days of receipt of the request for a declaratory ruling, the agency shall make a written decision to grant or deny the request. If the agency fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.

(2) If the agency denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.

(3) If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of this Chapter.

(4) If the agency fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits and the person aggrieved may seek judicial review pursuant to Article 4 of this Chapter. Upon review of an agency's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved."

(b) Repealed by Session Laws 1997-34, s. 1."

SECTION 57. Every State agency, board, commission, or other body with rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the body that includes for each rule the following information:

(1) Whether the rule is mandated by a federal law or regulation.

(2) If the rule is not mandated by a federal law or regulation, whether there is a federal regulation that is analogous to the rule. For purposes of this subdivision, "analogous" means the federal regulation regulates the same conduct or activity as the State regulation.

(3) If there is a federal statute or regulation analogous to the rule, whether the rule is more stringent than the federal law or regulation.

SECTION 58. The Joint Regulatory Reform Committee shall study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter

150B of the General Statutes. The Committee shall examine the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

SECTION 59.(a) G.S. 113A-12 reads as rewritten:

"**§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

(1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, or natural gas line within or across the right-of-way of any street or highway.

(2) An action approved under a general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).

(3) A lease or easement granted by a State agency for:

a. The use of an existing building or facility.

b. Placement of a wastewater line on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.

c. A shellfish cultivation lease granted under G.S. 113-202.

(4) The construction of a driveway connection to a public roadway.

(5) A project for which public monies are expended if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.

(6) A major development as defined in G.S. 113A-118(c) that receives a permit issued under Article 7 of Chapter 113A of the General Statutes."

SECTION 59.(b) This section is effective when it becomes law and applies to any major development for which a permit application is received by the Department of Environment and Natural Resources on or after that date.

SECTION 60.(a) G.S. 143-215.108(d1) reads as rewritten:

"(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years."

SECTION 60.(b) G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

~~(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.~~

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a

zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

SECTION 60.(c) G.S. 143-215.1 is amended by adding a new subsection to read:

"(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term of eight years."

SECTION 60.(d) The Department of Environment and Natural Resources shall review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 60.(e) This section is effective when this act becomes law and applies to permits that are issued on or after July 1, 2011.

SECTION 61. The Secretary of Environment and Natural Resources shall develop a uniform policy for notification of deficiencies and violations for all of the regulatory programs within the Department of Environment and Natural Resources. In developing the notification policy, the Secretary shall establish different types of notification based on the potential or actual level of harm to public health, the environment, and the natural resources of the State. The Secretary shall also review the notification policies of the United States Environmental Protection Agency and the environmental regulatory programs of other states. The Secretary shall report on the development of the notification policy to the Environmental Review Commission and the Joint Select Regulatory Reform Committee no later than October 1, 2011. The Secretary shall implement the uniform notification policy no later than February 1, 2012.

SECTION 61.1. The Office of Administrative Hearings shall evaluate the use of mediated settlement conferences under G.S. 150B-23.1 and shall develop a plan to expand the use of mediation in the contested case process. The Office of Administrative Hearings shall report its findings and recommendations to the Joint Legislative Regulatory Reform Committee by February 1, 2012.

SECTION 61.2. S.L. 2011-13 is repealed.

SECTION 62. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 63. Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless

otherwise provided elsewhere in this act, this remainder of this act is effective when it becomes law.

SENATE BILL 781:
Regulatory Reform Act of 2011

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 8, 2011
Introduced by:	Sens. Rouzer, Brown	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S781-CSRO-24		

SUMMARY: The PCS makes the following changes to the bill:

- ***Section 1. Adds language to clarify that the new provision only applies to policies that fit the definition of a rule. (p. 1)***
- ***Section 2. Deletes sentence giving authority to OSBM in G.S. 150B-19.2. Adds Pesticide Board to enumerated agencies under G.S.150B-19.3. (p. 3)***
- ***Sections 22 and 25. Restores reference to persons aggrieved as having authority to seek judicial review. (pp. 11 & 12)***
- ***Section 27. Amends G.S. 150B-51(c) to clarify the standard of judicial review of final decisions made by ALJs. (p. 13)***
- ***Section 55.1. New section directing DHHS to seek a waiver for final decisions made by OAH. (p. 21)***
- ***Section 56. Modifies the process to be used by an agency in response to a request for a declaratory ruling. (p. 22)***
- ***Section 60. Extends term of permits to 8 years rather than 10. (pp. 23 – 25)***
- ***Section 61.1. New section directing the OAH to evaluate the use of mediated settlement conferences, develop a plan to expand the use of such conferences, and report to Joint Regulatory Reform committee by February 1, 2012. (p. 25)***
- ***Section 61.2. New section which repeals SB 22. (p. 25)***

VISITOR REGISTRATION SHEET

Commerce — 6/8/11 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Everett	Duke Energy
Molly Diggins	Sierra Club
Dan Conrad	NCCN
Tom Beam	EDF
Mike Carpenter	NCHBA
Cady Thomas	NCAR
Doug Herron	WM
J Goodmon	NC Chamber
K. Stanley	Dept of Commerce
Forrest Gillman	Comm's Office

VISITOR REGISTRATION SHEET

Commerce — Name of Committee

6-8-2011 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID RICE	MANNING FULTON
Rick Zechini	Progress Energy
Julian Mann	OAH
Nick Fountain	YOUNG MOORE
Frank Gray	NCRLA
Ray Starling	NCDA+CS
Tommy Stevens	NCPC
Kevin Bianco	NWC
[illegible]	Con[illegible]
[illegible] Robinson	NCRMA
CS Hollis	FSS

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	TS
Andy Ellen	NCRWA
Will Morgan	Sierra Club
MM Asbill	SECC
Kari Barsness	DENR
Robin Smith	DENR
Lisa Martin	NC Home Builders
Paul Sherman	NCFB
LC [illegible]	CSS
Preston Howard	MCIC
Kathy Hawkins	Duke

SENATE COMMERCE COMMITTEE
Tuesday, June 14, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 10:00 AM on June 14, 2011, in Room 1027of the Legislative Building. Twenty-five members of the committee were present. Senator Brown presided. Roger Loesch and Carter Loesch of Charlotte, Jamarus Swinson of Fayetteville, Lauren Koury and Mallory Bartles of Fayetteville served as pages.

H.B. 117 – Electric Cities/Uses of Rate Revenue

Representative Daughtry was recognized to explain the bill. It would require revenues from the municipal owned electric systems of Clayton, Selma and Smithfield to be used only for the following: 1. direct and indirect costs of the systems, 2. transfers to other funds of the municipality that represent a rate of return on the investment in the system and 3. debt service payments on the system. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 174 – Commercial Real Estate Broker Lien Act

Representative McCormick was recognized to explain the bill, which enacts the Commercial Real Estate Broker Lien Act. Kathy Wilkerson, an attorney with the NC Bar Association, was recognized to voice opposition to the bill. Marian Bare and Cady Thomas with the NC Real Estate Commission were recognized to speak in favor of the bill. Senator Goolsby moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 36 – Employers/Government Contractors Must Use E-Verify

Representative Cleveland was recognized to explain the bill. Senator Gunn moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS requires contractors and their subcontractors who contract with a government agency in this State to use the federal E-verify program to verify the work authorization of newly hired employees. Senator Apodaca was recognized to offer a technical amendment and Senator Meredith moved for its adoption. The motion carried. John Goodman, a lobbyist with the North Carolina Chamber, was recognized to speak favorably. Ron Woodard, a lobbyist for NC LISTEN, wants the bill to go farther. Senator Meredith moved to adopt the PCS as amended and the motion carried. A copy of the PCS, the summary and the amendment is attached.

H.B. 386 – Real Estate license Law Amendments

Representative Howard was recognized to explain the bill which would make various amendments to the Real Estate Licensing Law relating to licensing requirements, regulation of licensees, the Real Estate Recovery Fund, and the regulation of time shares. Janna Thorn, with the NC Real Estate Commission, was recognized to answer questions. Senator Harrington moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 585 – NC Energy Independence Study

Senator Goolsby was recognized to explain the bill. Senator Apodaca moved to adopt the PCS for discussion and the motion carried. The PCS would require verification of the identity of the owner of real property upon which a manufactured home is located for retitling of the manufactured home. The PCS would also require the Division of Motor Vehicles to issue the title in the name of the owner of the real property where the manufactured home is located or in the name of the leasehold tenant. Senator Harrington moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 616 – Amend Engineers and Surveyors Laws

Senator Hise was recognized to explain the bill which would amend G.S. Chapter 89C, the laws relating to the regulation of engineering and land surveying. Senator Hise offered an amendment to define jobs and Senator Garrou moved to adopt the amendment. The motion carried. Senator Apodaca moved for a favorable report as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 648 – Improve Enforcement/General Contractor Laws

Representative Hastings was recognized to explain the bill. Senator Meredith moved to adopt the PCS for discussion and the motion carried. The PCS amends the statutes dealing with general contractors by modifying the requirements for claiming the owner's exception to the licensing requirement. The PCS makes the following changes: 1) clarifies that an owner of a property that obtains a building permit under the owner exception is not required to be personally present at all inspections, if the plans for the building were drawn and sealed by a licensed architect and 2) amends the law for licensing of general contractors to provide that an applicant that allows his or her license to lapse for more than 4 years (was 2), must apply for a license as a new applicant rather than a renewal applicant. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 686 – Payable on Death Accounts

Representative Hastings explained the bill which expands the permissible beneficiaries of a payable on death account to include entities such as a charitable corporation or a private trust. Senator Harrington moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 806 – Zoning St. of Limit./Ag. Dist. Change

Representative Jordan was recognized to explain the bill. Senator Goolsby moved to adopt the PCS for discussion and the motion carried. The PCS would change the statute of limitations and repose for challenging zoning ordinances, clarifying the applicability of the statute of limitations to enforcement actions or administrative appeals and to prohibit specified zoning ordinances affecting single-family detached residential uses on lots greater than 10 acres in agricultural zoning districts. Michael Brough, a Chapel Hill attorney, was recognized to further explain the bill. Amy Bason, an attorney with the NC County Commissioners Association, was recognized to express some concerns with the bill. Mike Cox, Pasquotank County's attorney, was recognized to speak in opposition to the bill. Senator Clodfelter offered a clarifying amendment and Mike Carpenter, a NC Homebuilders Association lobbyist, was recognized to explain the amendment. Senator Clodfelter moved to adopt the amendment and the motion carried. Senator

Hise moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendment is attached.

H.B. 484 – Transfer Emergency Foreclosure Program to HFA.

Representative Brubaker was recognized to explain the bill. It would transfer management of the State Home Foreclosure Prevention Project and Fund to the North Carolina Housing Finance Agency, it would also exempt the Housing Finance Agency from complying with Articles 6 and 7 of Chapter 146 of the General Statutes, and it would authorize the Commissioner of Banks to acquire property subject to approval of the State Banking Commission. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 654 – Homeowner/Homebuyer Protection Act

Representative LaRoque was recognized to explain the bill which makes various changes to the Homeowner and Homebuyer Protection Act enacted in 2010. Al Ripley, NC Justice Center attorney, Jennifer Epperson, NC Department of Justice, and Beth Young, an attorney with the Financial Protection Law Center, were recognized to speak in opposition to the bill. Tony Robertson and Jim Williams, real estate investors, were recognized to speak in favor of the bill. Senator Apodaca was recognized to offer a technical amendment. Due to time, the bill was pulled from the agenda. A copy of the bill, the summary and the amendment is attached.

The meeting adjourned at 11:57 a.m.

Senator Harry Brown, Presiding

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, June 14, 2011, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 36	Employers/Gov. Contractors Must Use E-Verify.	Rep. Folwell Rep. Cleveland Rep. Warren
HB 117	Electric Cities/Uses of Rate Revenue.	Rep. Daughtry Rep. Wainwright
HB 174	Commercial Real Estate Broker Lien Act	Rep. Brubaker
HB 386	Real Estate License Law Amendments.-AB	Rep. Brubaker Rep. Howard
HB 484	Transfer Emergency Foreclosure Program to HFA.	Rep. Brubaker
HB 585	NC Energy Independence Study.	Rep. Jones Rep. Pridgen Rep. Hastings
HB 616	Amend Engineers and Surveyors Laws.	Rep. Gillespie
HB 648	Improve Enforcement/General Contractor Laws.	Rep. Hastings Rep. Hager
HB 654	Homeowner/Homebuyer Protection Act	Rep. McCormick
HB 686	Payable on Death Accounts.	Rep. Hastings
HB 806	Zoning St. of Limit./Ag. Dist. Change.	Rep. Jordan Rep. Stam Rep. Stevens Rep. Moffitt

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, June 14, 2011

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

FAVORABLE

H.B.(CS #1) **117** Electric Cities/Uses of Rate Revenue.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **174** Commercial Real Estate Broker Lien Act.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **386** Real Estate License Law Amendments.-AB
Sequential Referral: None
Recommended Referral: None

H.B. **484** Transfer Emergency Foreclosure Program to HFA.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **686** Payable on Death Accounts.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B. **616** Amend Engineers and Surveyors Laws.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **585** NC Energy Independence Study.
Draft Number: 70254
Sequential Referral: None
Recommended Referral: None

Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **648** Improve Enforcement/General Contractor Laws.

Draft Number:	30395
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: **8**

Committee Clerk Comments:

H117 – Sen. Rouzer
H174 - ??
H386 – Sen. Gunn
H484 – Sen. Brown
H585 – Sen. Goolsby
H616 – Sen. Hise
H648 – Sen. Apodaca
H686 – Sen. Goolsby

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, June 14, 2011

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **36** Employers/Gov. Contractors Must Use E-Verify.

Draft Number:	70253
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **806** Zoning St. of Limit./Ag. Dist. Change.

Draft Number:	30396
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

H36- Sen. Apodaca
H806 – ?? (Might be Sen. Clodfelter)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 117
Committee Substitute Favorable 6/1/11

Short Title: Electric Cities/Uses of Rate Revenue. (Local)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TOWNS OF CLAYTON, SELMA, AND SMITHFIELD SHALL USE REVENUE DERIVED FROM RATES FOR ELECTRIC SERVICE FOR PAYING THE DIRECT AND INDIRECT COSTS OF OPERATING THE ELECTRIC SYSTEM, TRANSFERRING AMOUNTS THAT REPRESENT A RATE OF RETURN ON THE INVESTMENT IN THE ELECTRIC SYSTEM, AND MAKING DEBT SERVICE PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 159B of the General Statutes is amended by adding a new section to read as follows:

"**§ 159B-39. Permitted uses of revenue from electric power rates.**

(a) A municipality as authorized in this Chapter shall use revenue derived from rates for electric service to (i) pay the direct and indirect costs of operating the electric system and (ii) transfer to other funds of the municipality a sum that reflects a rate of return on the investment in the electric system to the extent allowed in subsection (c) of this section. Any remaining revenue shall be used to produce lower rates on electric service within the area served by the municipal electric system and to make additional debt service payments on bonds or other indebtedness incurred by the municipality to finance improvements to the electric system. A municipality shall not otherwise transfer revenue from an electric utility fund to any other fund of the municipality for any other purpose not explicitly authorized by law.

(b) The direct and indirect costs of operating the electric system include all of the following:

(1) Debt service payments on indebtedness incurred for the electric system or secured by revenues of the electric system.

(2) Capital improvements or equipment for the electric system.

(3) Payments for the cost of power purchased under contractual arrangements.

(4) Debt service, maintenance, renewal, and replacement or other reserves required by legal documents entered into by the municipality in connection with the issuance of bonds or other indebtedness for the electric system.

(5) Reserves deemed necessary by the governing body of the municipality to assure that funds are available to maintain the financial and operational integrity of the electric system.

(6) Maintaining a rate stabilization fund to minimize the impact of periodic rate changes that would otherwise be required to reflect changes in costs of operations and demand for electric service.

(7) Making payments in lieu of taxes to other governmental units to reflect property taxes that would have been collected by the other governmental unit if the municipality were not the owner of the electric system.

(8) Making transfers to the general fund or other funds of the municipality to reimburse the general fund or other funds for costs paid from the fund that are reasonably allocable to the electric system.

(c) The total amount transferred to other funds of the municipality authorized as a rate of return on the investment of the municipality in the electric system shall not exceed the amount allowed in this subsection. The amount to be transferred shall be calculated using amounts reported in the municipality's audited financial statements for the preceding fiscal year. The amount transferred shall not exceed either of the following:

(1) Three percent (3%) of the gross capital assets of the electric system at the end of the preceding fiscal year.

(2) Five percent (5%) of the gross annual revenues of the electric system for the preceding fiscal year.

(d) The restrictions in this section shall not apply to any action required to be taken for a municipality by the Local Government Commission in accordance with G.S. 159-181(c)."

SECTION 2. This act only applies to the towns of Clayton, Selma, and Smithfield.

SECTION 3. This act becomes effective July 1, 2011.

HOUSE BILL 117:
Electric Cities/Uses of Rate Revenue

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. Daughtry, Wainwright	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 117 would require revenues from the municipal owned electric systems of Clayton, Selma, and Smithfield to be used only for the following:***

- ***Direct and indirect costs of the systems.***
- ***Transfers to other funds of the municipality that represent a rate of return on the investment in the system.***
- ***Debt service payments on the system.***

CURRENT LAW: Cities are authorized to operate public enterprises, including electric power generation, transmission, and distribution systems. The cities have the authority to set rates for the electric system. Because the cities are not considered public utilities under the statutes, the rates set by municipalities for the electric systems are not subject to review by the Utilities Commission.

Cites are also authorized to establish and operate electric power projects by formation of a joint agency for ownership of a project. These joint agencies are authorized to issue revenue bonds to finance the costs of a project. Two joint agencies have been formed under this authorization, North Carolina Municipal Power Agency No. 1 (NCMPA1) and North Carolina Eastern Power Agency (NCEMPA) were formed. NCMPA1 has 19 members; NCEMPA has 32 members; 19 other cities offer electric service but do not belong to either of the Municipal Power Agencies.

The NCMPA1 has a 75 percent ownership interest in Catawba Nuclear Station Unit 2. This plant is operated by Duke Power and located in York County, S.C. NCMPA1 also has an agreement with Duke that provides for electric power via McGuire Nuclear Station and Catawba Unit 1 should Catawba 2 be unavailable for service. The debt for the NCMPA1 as of January 2, 2011 is $1,541,085,000.

The NCEMPA owns interest in five generating units built and operated by Progress Energy. These facilities include three nuclear units, 2 units at the Brunswick Plant in Brunswick County, and 1 unit at Shearon Harris Plant in Wake County. The NCEMPA also owns an interest in two coal-fired plants in Person County. The debt for the NCEMPA as of January 2, 2011 is $2,254,510,000.

BILL ANALYSIS: The proposed committee substitute to House Bill 117 would limit the use of revenues from the electric systems operated by New Bern, Kinston, Clayton, Selma, and Smithfield. The revenues could only be used to pay the direct and indirect costs of operating the system, transferring an amount that represents the rate of return on the system, or to make debt service payments.

The direct and indirect costs of the electric system include all of the following:

- Debt service payments on indebtedness incurred for the electric system or secured by revenues of the electric system.
- Capital improvements or equipment for the electric system.
- Payments for the cost of power purchased under contractual arrangements.

- Debt service, maintenance, renewal, and replacement or other reserves required by legal documents entered into by the municipality in connection with the issuance of bonds or other indebtedness for the electric system.
- Reserves deemed necessary by the governing body of the municipality to assure that funds are available to maintain the financial and operational integrity of the electric system.
- Maintaining a rate stabilization fund to minimize the impact of periodic rate changes that would otherwise be required to reflect changes in costs of operations and demand for electric service.
- Making payments in lieu of taxes to other governmental units to reflect property taxes that would have been collected by the other governmental unit if the municipality were not the owner of the electric system.
- Making transfers to the general fund or other funds of the municipality to reimburse the general fund or other funds for costs paid from the funds that are reasonably allocable to the electric system.

The total amount transferred as a rate of return on the municipality's investment in the electric system is one of the following:

- 3% of gross capital assets of the system in the prior year.
- 5% of the annual gross revenues of the system in the prior year.

The restrictions in the act will not apply to actions taken by the Local Government Commission.

EFFECTIVE DATE: This act becomes effective July 1, 2011 and only applies to the electric systems operated by Clayton, Selma, and Smithfield.

H117-SMTD-95(e2) v1

HOUSE BILL 174

Committee Substitute Favorable 3/17/11
Committee Substitute #2 Favorable 6/6/11
Fourth Edition Engrossed 6/7/11

Short Title: Commercial Real Estate Broker Lien Act. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE COMMERCIAL REAL ESTATE BROKER LIEN ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 44A of the General Statutes is amended by adding a new Part to read:

"Part 4. Commercial Real Estate Broker Lien Act.

"**§ 44A-24.1. Short title.**

This Part shall be known and may be cited as the 'Commercial Real Estate Broker Lien Act.'

"**§ 44A-24.2. Definitions.**

The following definitions apply in this Part:

(1) Broker. – A real estate broker licensed pursuant to Chapter 93A of the General Statutes.

(2) Broker services. – Services for which a license issued by the North Carolina Real Estate Commission is required pursuant to Chapter 93A of the General Statutes.

(3) Commercial real estate. – Any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for broker services:

a. Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units;

b. May lawfully be used for any of the purposes listed in subdivision (3) of this section by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in subdivision (3) of this section which is under consideration by the government agency with authority to approve the amendment; or

c. Is in good faith intended to be immediately used for any of the purposes listed in subdivision (3) of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.

(4) Commission. – Any compensation which is due a broker for performance of broker services.

(5) Lien claimant. – A broker claiming a lien pursuant to this Part.

(6) Owner. – The owner of record of any interest in commercial real estate.

"**§ 44A-24.3. Commercial real estate lien.**

(a) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, if:

(1) The broker has performed under the provisions of the agreement;

(2) The written agreement for broker services clearly sets forth the broker's duties to the owner; and

(3) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of such compensation.

(b) The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent. A lien under this section shall be available only against the commercial real estate which is the subject of the written agreement for broker services.

(c) When payment of commission to a broker is due in installments, a portion of which is due only after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due after the transfer or conveyance may be recorded at any time subsequent to the transfer or conveyance of the commercial real estate and within 90 days of the date on which the payment is due. The notice of lien shall be effective as a lien against the owner's interest in the commercial real estate only to the extent funds are owed to the owner by the transferee, but the lien shall be effective as a lien against the transferee's interest in the commercial real estate. A single claim for lien filed prior to transfer or conveyance of the commercial real estate claiming all commissions due in installments shall also be valid and enforceable as it pertains to payments due after the transfer or conveyance; provided, however, that as payments or partial payments of commission are received, the broker shall provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien.

"**§ 44A-24.4. When lien attaches to commercial real estate.**

. A lien authorized by this Part attaches to the commercial real estate only when the lien claimant files a timely notice of the lien conforming to the requirements of G.S. 44A-24.5 and this section in the office of the clerk of superior court. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate which is the subject of the lien, except that in the case of a lease or transfer of a nonfreehold interest, the notice of a lien shall be filed no later than 90 days following the tenant's possession of the commercial real estate or no later than 60 days following any date or dates set out in the written agreement for broker services for subsequent payment or payments. When a notice of a lien is filed more than 30 days preceding the date for settlement or possession set out in an offer to purchase, sales contract, or lease, which establishes the broker's claim of performance, the lien shall be available only upon grounds of the owner's breach of the written agreement for broker services.

"**§ 44A-24.5. Lien notice; content.**

(a) A lien notice under this Part shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

(b) The lien notice shall include all of the following information:

(1) The name of the lien claimant.

(2) The name of the owner.

(3) A description of the commercial real estate upon which the lien is being claimed.

(4) The amount for which the lien is claimed and whether the amount is due in installments.

(5) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien.

"**§ 44A-24.6. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the clerk of superior court and a condition occurs that would preclude the lien claimant from receiving compensation under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall file and serve the owner of record a written release or satisfaction of the lien promptly, and in no event more than 30 days after the demand.

"**§ 44A-24.7. Lien claimant to mail copy of notice of lien to owner by certified mail.**

Any lien claimant who files a lien on commercial real estate pursuant to the provisions of this Part shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in G.S. 1A-1, Rule 4. The lien claimant shall file proof of service with the clerk of the superior court. The lien is void if the lien claimant does not file and serve the lien as provided in this Part.

"**§ 44A-24.8. Enforcing lien.**

A lien claimant may bring suit to enforce a lien which attaches pursuant to the provisions of this Part in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall commence proceedings within 18 months after filing the lien, and failure to commence proceedings within the 18 months shall extinguish the lien. If a claim is based upon an option to purchase the commercial real estate, the lien claimant shall commence proceedings within one year of the option to purchase being exercised. A claim for the same lien extinguished pursuant to this section and G.S. 44A-24.10 may not be asserted in any subsequent proceeding. A lender shall not be made a party to any suit to enforce a lien under this Part unless the lender has willfully caused the nonpayment of the commission giving rise to the lien.

"**§ 44A-24.9. Complaint; content; parties' foreclosure action; procedure.**

(a) A complaint filed pursuant to the provisions of this section and G.S. 44A-24.8 shall contain all of the following:

(1) A statement of the terms of the written agreement for broker services on which the lien is based or a copy of the written contract or agreement.

(2) The date when the written agreement for broker services was made.

(3) A description of the services performed.

(4) The amount due and unpaid.

(5) A description of the property that is subject to the lien.

(6) Any other facts necessary for a full understanding of the rights of the parties.

(b) The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate; provided that a lender shall not be made a party to any suit to enforce a lien under this Part unless the lender has willfully caused the nonpayment of the commission giving rise to the lien: a foreclosure action for a lien claimed pursuant to this Part shall be brought pursuant to the provisions of this Article.

(c) Valid prior recorded liens or mortgages shall have priority over a lien under this Part.

"**§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending suit within 30 days after service on owner.**

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner,

lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service. The claimant shall file proof of properly served written demand with the clerk of the superior court. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this Part.

"**§ 44A-24.11. Satisfaction or release of lien.**

If a claim for a lien has been filed pursuant to the provisions of this Part with the clerk of superior court and the claim has been paid in full, or if the lien claimant fails to institute a suit to enforce the lien within the time as provided by law, the lien claimant shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner promptly, and in no event more than 30 days after the demand.

"**§ 44A-24.12. Cost of proceeding to be paid by nonprevailing party.**

The costs of any proceeding brought to enforce a lien filed pursuant to this Part, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

"**§ 44A-24.13. Discharge of lien.**

(a) Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this Article may be discharged by any of the following methods:

(1) The lien claimant of record, the claimant's agent, or attorney, in the presence of the clerk of superior court, may acknowledge the satisfaction of the claim of lien on the commercial real estate indebtedness, whereupon the clerk of superior court shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's agent, or attorney, and witnessed by the clerk of superior court.

(2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record, which instrument states that the claim of lien on the commercial real estate indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.

(3) By failure to enforce the claim of lien on the commercial real estate within the time prescribed in this Article.

(4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.

(5) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate is deposited with the clerk of superior court to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate.

(6) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the clerk of superior court,

whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate.

(7) By failure to file documentation if required pursuant to G.S. 44A-24.6 or G.S. 44A-24.10.

(b) If funds in an amount equal to one hundred twenty-five percent (125%) of the amount that is sufficient to release the claim of lien have been deposited with the clerk of superior court, or a bond in an equal amount has been secured, the lien claimant shall release the claim for the lien on the commercial real estate, and the lien claimant shall have a lien on the funds deposited with the clerk of superior court.

"**§ 44A-24.14. Priority of lien under this Part.**

Any claim of lien on real property or claim of lien on funds allowed under Part 1 or Part 2 of this Article shall be deemed superior in all respects to any lien asserted under this Part, regardless of the effective date of the competing liens and shall survive notwithstanding any judgment awarding a lien under this Part. No lien claimant filing a lien pursuant to this Part shall be entitled to participate in any pro rata distributions to claimants proceeding under G.S. 44A-21."

SECTION 2. Article 1 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"**§ 93A-13. Contracts for broker services.**

No action between a broker and the broker's client for recovery under an agreement for broker services is valid unless the contract is reduced to writing and signed by the party to be charged or by some other person lawfully authorized by the party to sign."

SECTION 3. This act becomes effective October 1, 2011, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.

HOUSE BILL 174:
Commercial Real Estate Broker Lien Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. McCormick, Gibson, Daughtry, Murry	**Prepared by:**	Wendy Graf Ray
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 174 enacts the Commercial Real Estate Broker Lien Act.

CURRENT LAW: A lien is a claim on another's property asserted to secure payment of a debt. Chapter 44A of the General Statutes addresses statutory liens and charges. Article 2 addresses statutory liens on real property. Currently, there are no statutes which give a commercial real estate broker a lien on commercial real estate.

BILL ANALYSIS: Section 1 of House Bill 174 creates a new Part in the General Statutes that provides for all of the following.

Commercial Real Estate Lien-(New G.S. 44-24.3) A broker will have a lien on commercial real estate in the amount owed to the broker under a written instrument that is signed by the owner of commercial real estate or the owner's authorized agent if: (1) the broker has performed under the agreement, (2) the written agreement clearly sets forth the broker's duties, and (3) the agreement sets forth the conditions for earning compensation and the amount. When the payment of commission is to be made in installments, part of which will be made after the transfer of the real property, the notice of lien may be filed any time subsequent to the transfer and within 90 days of the date the payment is due. The lien is only effective as to amounts due the owner by the transferee, but is effective as a lien against the transferee's interest in the property. A single claim of lien may be filed for all installment payments due, but the broker must provide partial releases of the lien as the installments are paid.

When Lien Attaches-(New G.S. 44-24.4) A lien attaches to the commercial real estate only when the lien claimant files timely notice of the lien with the clerk of superior court of the county in which the real property is located. The notice is timely if filed after the claimant's performance of the written agreement for broker services and before the transfer or conveyance of the property. In the case of a lease or non-freehold interest, the notice of lien must be filed no later than 90 days after the tenant takes possession of the leased property or no later than 60 days following the date set out in the written agreement for subsequent payments. Further, when a notice of lien is filed more than 30 days before the date for settlement or possession which is set out in an offer to purchase or lease which establishes the broker's performance, the lien shall be available only upon grounds of the owner's breach of the written agreement.

Contents of Lien Notice-(New G.S. 44-23.5) A lien notice must be signed by the lien claimant and must contain an attestation that the information in the notice is true. The lien notice must include all of the following:

- Name of the lien claimant.
- Name of the owner of the commercial real estate.
- Description of the commercial real estate upon which the lien is being claimed.
- Amount for which the lien is claimed. The pcs adds whether the amount is due in installments.
- Grounds for the lien including a reference or a copy of the written agreement.

Filing of Release or Satisfaction of the Lien-(New G.S. 44-24.6) If a condition occurs that would preclude the lien claimant from receiving compensation under the written instrument, the lien claimant must file and provide the owner a written release or satisfaction of the lien. The the written release must be filed and served within 30 days after the demand.

Notice of Lien-(New G.S. 44-24.7) A lien claimant must mail notice of the lien to the owner (1) by certified mail, return receipt requested or (2) by following any service of process provisions in G.S. 1A-1, Rule 4. The lien claimant is also required to file proof of service with the clerk of superior court. A lien is void if the lien claimant does not file and serve the lien as provided in the statutes.

Enforcing the Lien-(New G.S. 44-24.8) A lien claimant may bring suit by to enforce a lien in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant must begin proceedings within 18 months after filing the lien unless the claim is based on an option to purchase the commercial real estate, in which case the proceedings must begin within one year. A lender shall not be made a party to any suit to enforce a lien unless the lender has intentionally caused the non-payment of the commission.

Petition-(New G.S. 44-24.9) A complaint filed under this section must contain all of the following:

- Statement of the terms of the agreement on which the lien is based or a copy of the written contract or agreement.
- Date when the agreement was made.
- Description of the services performed.
- Amount due and unpaid.
- Description of the property that is subject to the lien.
- Any other facts necessary for a full understanding of the rights of the parties.

The plaintiff must file the action against all parties which have an interest of record in the commercial real estate. A foreclosure action to enforce the lien must be brought pursuant to Article 1 of Chapter 44A. Valid prior recorded liens or mortgages have priority over a lien under this Part.

Lien extinguished for failing to file suit or answer in pending suit w/in 30 days-(New G.S. 44-24.10) If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after written demand, the lien must be extinguished. Service of the demand must be by registered or certified mail, return receipt requested, or by personal service. The lien claimant shall file proof of properly served written demand with the clerk of superior court.

Satisfaction or release of lien-(New G.S. 44-24.11) If the claim has been paid in full or if the lien claimant fails to institute a suit to enforce the lien within the time provided by law, the lien claimant must acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

Costs paid by non-prevailing party-(New G.S. 44-24.12) The costs of any proceeding brought to enforce a lien, including reasonable attorneys' fees and prejudgment interest, is paid by the nonprevailing party or parties.

Discharge of Lien-(New G.S. 44-24.13) Unless an alternative procedure is available and is acceptable to the transferee, a claim of lien may be discharged by:

- The lien claimant, or his attorney or agent, acknowledging satisfaction of the lien to the clerk of superior court.

- The owner of the property providing the clerk of superior court with an instrument of satisfaction signed by the lien claimant.
- Failure of the lien claimant to enforce the claim of lien.
- Filing with the clerk of superior court the original or certified copy of a judgment showing the action to enforce the claim of lien has been dismissed or finally determined adverse to the claimant.
- Depositing with the clerk funds equal to 125% of the amount of the claim of lien to be applied to the payment finally determined to be due.
- Depositing with the clerk a corporate security bond in an amount equal to 125% of the amount of the claim of lien and conditioned on the payment of the amount finally determined to be due.
- Failure to file documentation required by statute.

Where funds or a bond equal to 125% of the amount of the lien have been deposited with the clerk, the claim of lien will be released and the lien claimant will have a lien on the funds held by the clerk.

Priority of lien under this Part – New G.S. 44A-24.14. Any claim of lien on real property or on funds allowed under Part 1 (Liens of Mechanics, Laborers, and Materialmen Dealing with Owner) or Part 2 (Liens of Mechanics, Laborers, and Materialmen Dealing with One other than Owner) shall be deemed superior to liens for broker services. In addition, a lien claimant will not be entitled to participate in any pro rata distributions to claimants under G.S. 44A-21.

Section 2 of House Bill 174 amends Article 1 of Chapter 93A of the General Statutes by adding a new section that provides that no action between a broker and his or her client under an agreement for broker services is valid unless the contract is reduced to writing and signed by the party to be charged.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to written instruments signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.

Barbara Riley, counsel to House Judiciary Subcommittee A, substantially contributed to this summary.

H174-SMSU-45(e4) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 36
Committee Substitute Favorable 5/19/11
Committee Substitute #2 Favorable 6/3/11
Fourth Edition Engrossed 6/8/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H36-CSMD-21 [v.5]

6/13/2011 6:07:37 PM

Short Title: Government Contractors Must Use E-Verify. (Public)

Sponsors:

Referred to:

February 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ENTITIES WHO CONTRACT WITH A GOVERNMENT AGENCY IN THIS STATE FOR CONSTRUCTION OR REPAIR WORK AND THEIR SUBCONTRACTORS TO USE THE FEDERAL E-VERIFY PROGRAM TO VERIFY THE WORK AUTHORIZATION OF NEWLY HIRED EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 1.
Various Provisions Related to Aliens."

SECTION 2. G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of Chapter 64 of the General Statutes, as created by Section 1 of this act.

SECTION 3. Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 2.
"Verification of Work Authorization by Entities That Contract With Government Agencies.

"**§ 64-10. Definitions.**

The following definitions apply in this Article:

(1) Contractor. – A person or entity that employs at least 25 full time employees and that contracts with a public entity for construction or repair work.

(2) E-Verify. – The federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

(3) Public entity. – A State agency, department, institution, board, commission, university, community college, local education agency, county, city, or any other political subdivision of this State. The term also includes any board, commission, authority, or other body created by any of these entities.

(4) Subcontractor. – Any person or entity that employs at least 25 full time employees, other than a contractor, who furnishes construction or repair

work to a contractor or another subcontractor with a good faith and reasonable belief that the work was furnished as part of a contract between a contractor and a public entity. This term includes any person who meets this definition regardless of the tier of the subcontractor.

"**§ 64-11. Contractors contracting with public entities must use E-Verify; certification required.**

(a) Contractors Must Use E-Verify. – Notwithstanding any other provision of law, a public entity may not enter into a contract for construction or repair work unless the contractor registers and participates in E-Verify to verify the work authorization of new employees.

(b) Certification Required. – Within 10 business days of any contract subject to this section being entered into, the contractor shall certify to the public entity in writing all of the following:

(1) That the contractor is in compliance with subsection (a) of this section.

(2) That any subcontractor with which the contractor enters into a subcontract concerning the contract between the contractor and the public entity is in compliance with, or will be in compliance with, G.S. 64-12.

(3) That the contractor has not been convicted pursuant to subsection (d) of this section within one year prior to making the certification.

(c) Duty to Provide Subcontractor Certifications to Public Entity. – Until completion of a contract, on a monthly basis, a contractor shall submit to the public entity any certifications received pursuant to G.S. 64-12.

(d) Knowingly Submitting False Certification. – A person who knowingly submits a false certification to a public entity under this section shall be guilty of a Class 1 misdemeanor. A contractor shall not be guilty under this subsection for submitting to the public entity a subcontractor's false certification, or for failing to investigate or verify a subcontractor's certification. A person shall not be guilty under this subsection if the violation is the result of a clerical mistake or other inadvertence.

(e) Effect of Failure to Make Certification. – The failure of a contractor to provide the certification required by subsection (b) of this section within the time period set forth in that subsection shall render the contract voidable at the option of the public entity.

"**§ 64-12. Subcontractors contracting with public entities must use E-Verify; certification required.**

(a) Subcontractors Must Use E-Verify. – Notwithstanding any other provision of law, a subcontractor shall register and participate in E-Verify to verify the work authorization of new employees.

(b) Certification Required. – Within 10 business days of commencing performance under a subcontract with a contractor or another subcontractor under or pursuant to a contract between a contractor and a public entity, the subcontractor shall certify to the contractor in writing all of the following:

(1) That the subcontractor is in compliance with subsection (a) of this section.

(2) That the subcontractor has not been convicted pursuant to subsection (c) of this section within one year prior to making the certification.

(c) Knowingly Submitting False Certification. – Any person who knowingly submits a false certification under this section shall be guilty of a Class 1 misdemeanor. A person shall not be guilty under this subsection if the violation is the result of a clerical mistake or other inadvertence.

(d) Effect of Failure to Make Certification. – The failure of a subcontractor to provide the certification required by subsection (b) of this section within the time period set forth in that subsection shall preclude the subcontractor from maintaining a civil action against any person or entity for amounts owed to the subcontractor under or in connection with the subcontract.

"**§ 64-13. Department of Administration shall develop standard certification form.**

The Department of Administration shall develop a standard form on which the certifications required by this Article shall be made. Contractors and subcontractors shall use this form when making certifications pursuant to this Article."

SECTION 4. G.S. 153A-449 reads as rewritten:

"**§ 153A-449. Contracts with private ~~entities.~~entities; contractors must use E-Verify.**

(a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in.

(b) Contractors Must Use E-Verify. – No county may enter into a contract unless the contractor complies with the requirements of Article 2 of Chapter 64 of the General Statutes, if applicable."

SECTION 5. G.S. 160A-20.1 reads as rewritten:

"**§ 160A-20.1. Contracts with private ~~entities.~~entities; contractors must use E-Verify.**

(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in.

(b) Contractors Must Use E-Verify. – No city may enter into a contract unless the contractor complies with the requirements of Article 2 of Chapter 64 of the General Statutes, if applicable."

SECTION 6. G.S. 143-129 is amended by adding a new subsection to read:

"(j) No contract subject to this section may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor complies with the requirements of Article 2 of Chapter 64 of the General Statutes, if applicable."

SECTION 7. This act becomes effective January 1, 2013, and applies to bids submitted and contracts entered on or after that date.

HOUSE BILL 36:
Government Contractors Must Use E-Verify

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. H. Warren, Cleveland, Folwell	**Prepared by:**	O. Walker Reagan Staff Attorney
Analysis of:	PCS to Fourth Edition H36-CSMD-21		

SUMMARY: ***The proposed committee substitute for House Bill 36 requires contractors and their subcontractors who contract with a government agency in this State to use the federal E-verify program to verify the work authorization of newly hired employees.***

BILL ANALYSIS:

Sections 1 and 2 of bill are technical -- they amend Chapter 64 pertaining to Aliens by placing existing statutes, G.S. 64-1 through G.S. 64-5 into Article 1, titled "Various Provisions Related to Aliens".

Section 3 creates in Chapter 64 a new Article 2, "Verification of Work Authorization by Entities that Contract with Government Agencies", as follows:

New G.S. 64-10 sets out the definitions applicable in this Article. The definitions define contractors and subcontractors as an entity that employs at least 25 full-time employees.

New G.S. 64-11 prohibits public entities from entering into construction or repair work unless the contractors entering into contracts with public entities register and participate in E-Verify to verify the work authorization of new employees.

Within 10 business day of any contract subject to this law, the contractor must certify that:

- The contractor is using E-Verify.
- Any Subcontractor, in a subcontract with the contractor, is or will be in compliance under the requirements of G.S. 64-12. Contractors are required to submit new certifications received from subcontractors on a monthly basis to the public entity until the contract is complete.
- The contractor has not been subject to a civil penalty within the last year of knowingly submitting a false certification, as defined by G.S. 64-11(d).

A person who knowingly submits a false certification to a public entity will be guilty of a Class 1 misdemeanor. A person will not be subject to a penalty for an inadvertent or clerical mistake.

Failure to comply with the requirements of this section render the contract voidable by the public entity.

New G.S. 64-12 requires subcontractors to register and participate in E-Verify to verify the work authorization of new employees and to provide certification of such to the contractor within 10 business days of commencing performance under the subcontract. Failure of a subcontractor to provide certification precludes the subcontractor from maintaining a civil action against a person or entity for amounts owed to the subcontractor. A person who knowingly submits a false certification will be guilty of a Class 1 misdemeanor.

New G.S. 64-13 directs the Department of Administration to develop the standard certification form.

Section 4 amends G.S. 153A-449, pertaining to contracts between counties and private entities, to require a contractor's compliance with E-Verify requirements contained in G.S. 64-11.

Section 5 amends G.S. 160A-20.1, pertaining to contracts between cities or towns and private entities, to require a contractor's compliance with E-Verify requirements contained in G.S. 64-11.

Section 6 amends G.S. 143-129, pertaining to the procedures for public contract letting, to require a contractor's compliance with E-Verify requirements contained in G.S. 64-11.

EFFECTIVE DATE: The bill becomes effective January 1, 2013 and applies to bids and contracts entered into on or after that date.

BACKGROUND: *E-Verify* - The US Dept. of Homeland Security, US Citizenship and Immigration Services, has responsibility for the E-Verify system. E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from US Department of Homeland Security and Social Security Administration records to confirm employment eligibility. 8 U.S.C. §1324a(b).

Unauthorized Alien -- 8 U.S.C. §1324a(h)(3) defines the term as follows:

> "(3) Definition of unauthorized alien
>
> As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either
>
> (A) an alien lawfully admitted for permanent residence, or
>
> (B) authorized to be so employed by this chapter or by the Attorney General."

INS obligation to respond to inquiries --8 U.S.C. §1373(c):

> "(c) Obligation to respond to inquiries
>
> The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information."

Current E-Verify Requirements for Certain Employees - In 2006, the General Assembly enacted G.S. 126-7.1(f) which requires State agencies, departments, institutions, universities, community colleges and local education agencies to use the Basic Pilot Program. The Basic Pilot Program became E-Verify.

Chamber of Commerce of the United States of America v. Whiting, 2011 WL 2039365 (May 26, 2011)
In this case, the Supreme Court upheld an Arizona law which required all employers to use E-Verify, and required, in specified circumstances, its state courts to suspend or revoke the business licenses of an employer who knowingly or intentionally employed an unauthorized alien. The Court found that the Arizona law was not preempted by federal law.
Specifically, the Court noted:

- There is not a prohibition in Federal law on a state requiring use of E-Verify.
- Arizona law does not contain any federally prohibited criminal penalties for employment of unauthorized aliens, it affects business related licenses.
- Arizona law provides that verification of work authorization may only be accomplished by state reliance on E-Verify, and not by independent State action, and provides a "safe harbor" from liability by use of E-Verify.

H36-SMRU-6(e4) v1

Giles Perry and Theresa Matula of the Research Division substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 36

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H36-AMD-66 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
H36-CSMD-21

Date June-14 ,2011

Senator Apodaca

moves to amend the bill on Page 1, Line 2, by inserting between the words "REQUIRE" and the word "ENTITIES" the following: "COUNTIES, CITIES, AND"; and

on Page 3, Line 26 and 27, by deleting the lines and substituting the following:

"**SECTION 7.** Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

'**§ 153A-99.1. County verification of employee work authorization.**

(a) Counties Must Use E-Verify. – Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.

(b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

(c) Nondiscrimination. – This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.'

SECTION 8. Article 7 of Chapter 160A of the General Statutes is amended by adding a new section to read:

'**§ 160A-169.1. Municipality verification of employee work authorization.**

(a) Municipalities Must Use E-Verify. – Each municipality shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.

(b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

(c) Nondiscrimination. – This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.'

SECTION 9. This act becomes effective January 1, 2012, and applies to bids submitted and contracts entered on or after that date."; and

on Page 2, Line 9, by deleting "employees." and substituting "employees hired to work in the United States."; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 36

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

H36-AMD-66 [v.1]

on Page 2, Line 35, by deleting "employees." and substituting "employees hired to work in the United States."; and

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 386*
Committee Substitute Favorable 4/20/11

Short Title: Real Estate License Law Amendments.-AB (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-2 reads as rewritten:

"**§ 93A-2. Definitions and exceptions.**

...

(a1) The term broker-in-charge within the meaning of this Chapter means a real estate broker who has been designated as the broker having responsibility for the supervision of ~~real estate salespersons~~brokers on provisional status engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule.

...

(c) The provisions of this Chapter do not apply to and do not include:

(1) Any ~~person,~~ partnership, corporation, limited liability company, association, or other business entity ~~who,~~that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein.

(2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate.

(3) ~~The acts or services of an attorney at law.~~Acts or services performed by an attorney who is an active member of the North Carolina State Bar if the acts and services constitute the practice of law under Chapter 84 of the General Statutes.

(4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court.

(5) Any person, while acting as a trustee under a written trust agreement, deed of trust or will, or that person's regular salaried employees. The trust agreement, deed of trust, or will must specifically identify the trustee, the beneficiary, the corpus of trust, and the trustee's authority over the corpus.

(6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee's employment is limited to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units;

completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker. However, in a vacation rental transaction as defined by G.S. 42A-4(3), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.

(7) Any individual owner who personally leases or sells the owner's own property.

(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter ~~as to any property owned or leased by the housing authority.~~with regard to the sale or lease of property owned by the housing authority or the subletting of property which the housing authority holds as tenant. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority."

SECTION 2. G.S. 93A-3(e) reads as rewritten:

"(e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the ~~Commission or may on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this Chapter, as to specific matters, but the fee paid for such service shall be approved by the Attorney General.~~ Commission, and may, with the approval of the Attorney General, employ attorneys to represent the Commission or assist it in the enforcement of this Chapter. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein."

SECTION 3. G.S. 93A-4 reads as rewritten:

"§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.

...

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be ~~cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure~~

~~prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.~~placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.

...

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, ~~and general moral character~~good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character and fitness, including the mental and emotional fitness, of each applicant for licensure ~~and~~ as the applicant's character and fitness may generally relate to the real estate brokerage business, the public interest, and the public's confidence in the real estate brokerage business. The Commission may also require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. Criminal record reports, credit reports, and reports relating to an applicant's mental and emotional fitness obtained in connection with the application process shall not be considered public records under Chapter 132 of the General Statutes. If the results of any required competency examination and investigation of the applicant's moral character and fitness shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker in the State of North Carolina, upon the payment of any privilege taxes ~~now required by law or that may hereafter be~~ required by law.

Notwithstanding G.S. 150B-38(c), in a contested case commenced upon the request of a party applying for licensure regarding the question of the moral character or fitness of the applicant, if notice has been reasonably attempted, but cannot be given to the applicant personally or by certified mail in accordance with G.S. 150B-38(c), the notice of hearing shall be deemed given to the applicant when a copy of the notice is deposited in an official depository of the United States Postal Service addressed to the applicant at the latest mailing address provided by the applicant to the Commission or by any other means reasonably designed to achieve actual notice to the applicant."

SECTION 4. G.S. 93A-4.1(c) reads as rewritten:

"(c) The Commission may adopt ~~any reasonable~~ rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The curriculum of courses required.
(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers ~~and salespersons~~ not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance."

SECTION 5. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of ~~applicants; roster of brokers; financial report to Secretary of State.~~ applicants and roster of brokers.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) ~~On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission.~~ The Commission shall file reports annually as required by G.S. 93B-2."

SECTION 6. G.S. 93A-6 reads as rewritten:

"**§ 93A-6. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.
(2) Making any false promises of a character likely to influence, persuade, or induce.
(3) Pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise.
(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
(5) Accepting a commission or valuable consideration as a real estate ~~salesperson~~broker on provisional status for the performance of any of the

acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in ~~an insured bank or savings and loan association in North Carolina~~a bank as provided by subsection (g) of this section all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time ~~the~~ a sales transaction is consummated, to deliver to ~~the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.~~the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know. If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that statement, but the broker must review the statement for accuracy and notify all parties to the closing of any errors.

(15) Violating any rule ~~or regulation promulgated~~adopted by the Commission.

~~The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county.~~

(b) ~~Following a hearing, the~~The Commission ~~shall also have power to~~may suspend or revoke any license issued under the provisions of this Chapter or ~~to~~ reprimand or censure any licensee when:

(1) The licensee has obtained a license by false or fraudulent representation;

(2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in

this State, or any other state, of ~~the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud,~~any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;

(3) The licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying the licensee's own property;

(4) The broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined; or

(5) ~~The licensee, who is also a State licensed or State certified real estate appraiser pursuant to Chapter 93E of the General Statutes, has violated any provisions of Chapter 93E of the General Statutes and has been reprimanded or has had an appraiser license or certificate suspended or revoked by the Appraisal Board.~~The licensee, who is also licensed as an appraiser, attorney, home inspector, mortgage broker, general contractor, or member of another licensed profession or occupation, has been disciplined for an offense under any law involving fraud, theft, misrepresentation, breach of trust or fiduciary responsibility, or willful or negligent malpractice.

(c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules ~~promulgated~~ adopted by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the Commission.

(d) Each broker shall maintain complete records showing the deposit, maintenance, and withdrawal of money or other property owned by the broker's principals or held in escrow or in trust for the broker's principals. The Commission may inspect these records periodically, without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee.

(e) When a person or entity licensed under this Chapter is accused of any act, omission, or misconduct which would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commission, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commission. A person or entity who surrenders a license shall not thereafter be eligible for or submit any application for licensure as a real estate broker ~~or salesperson~~ during the period of license surrender.

(f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision.

(g) A broker's trust or escrow account shall be a demand deposit account in a federally insured depository institution lawfully doing business in this State which agrees to make its records of the broker's account available for inspection by the Commission's representatives.

(h) The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior

court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter the order upon the judgment docket of the county."

SECTION 7. G.S. 93A-6.1(b) reads as rewritten:

"(b) The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. ~~Notwithstanding that exemption, the Commission shall serve, pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil Procedure or by certified mail to the licensee's last known address, a copy of the subpoena and notice that the subpoena has been served upon the financial institution. Service of the subpoena and notice on the licensee shall be made within 10 days following service of the subpoena on the financial institution holding the trust account records.~~Notwithstanding the exemption, whenever the Commission issues a subpoena under this subsection, the Commission shall send a copy to the licensee at his or her address of record by regular mail."

SECTION 8. G.S. 93A-9(a) reads as rewritten:

"**§ 93A-9. Licensing ~~nonresidents.~~foreign brokers.**

(a) ~~An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.~~The Commission may issue a broker license to an applicant licensed in a foreign jurisdiction who has satisfied the requirements for licensure set out in G.S. 93A-4 or such other requirements as the Commission in its discretion may by rule require."

SECTION 9. G.S. 93A-11(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real estate broker may include in the governing contract with a real estate ~~salesperson~~broker on provisional status whose nonemployee status is recognized pursuant to section 3508 of the United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the ~~salesperson~~broker on provisional status to reimburse the broker for the cost of covering that ~~salesperson~~ broker on provisional status under the broker's workers' compensation coverage of the broker's business."

SECTION 10. G.S. 93A-16 reads as rewritten:

"Article 2.

"Real Estate Education and Recovery Fund.

"**§ 93A-16. Real Estate Education and Recovery Fund created; payment to fund; management.**

(a) There is hereby created a special fund to be known as the "Real Estate Education and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by ~~any real estate salesperson licensed before April 1, 2006, or by~~any real estate broker. The Commission may also expend money from the fund to create books and other publications, courses, forms, seminars, and other programs and materials to educate licensees and the public in real estate subjects. However, the Commission shall make no expenditures from the fund for educational purposes if the expenditure will reduce the balance of the fund to an amount less than two hundred thousand dollars ($200,000).

(b) On September 1, 1979, the Commission shall transfer the sum of one hundred thousand dollars ($100,000) from its expense reserve fund to the Real Estate Education and

Recovery Fund. Thereafter, the Commission may transfer to the Real Estate Education and Recovery Fund additional sums of money from whatever funds the Commission may have, provided that, if on December 31 of any year the amount remaining in the fund is less than fifty thousand dollars ($50,000), the Commission may determine that each person or entity licensed under this Chapter, when renewing a license, shall pay in addition to the license renewal fee, a fee not to exceed ten dollars ($10.00) per broker ~~and five dollars ($5.00) per salesperson~~ as shall be determined by the Commission for the purpose of replenishing the fund.

(c) The Commission shall invest and reinvest the monies in the Real Estate Education and Recovery Fund in the same manner as provided by law for the investment of funds by the clerk of superior court. The proceeds from such investments shall be deposited to the credit of the fund.

(d) The Commission shall have the authority to adopt ~~reasonable~~ rules and procedures not inconsistent with the provisions of this Article, to provide for the orderly, fair and efficient administration and payment of monies held in the Real Estate Education and Recovery Fund."

SECTION 11. G.S. 93A-17 reads as rewritten:

"**§ 93A-17. Grounds for payment; notice and application to Commission.**

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by ~~a real estate salesperson licensed before April 1, 2006, or by~~ any licensed real estate broker shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker ~~or salesperson~~ in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Education and Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding ~~attorneys~~ attorneys' fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker ~~or salesperson~~ on grounds of conversion of trust funds arising out of a transaction which occurred when such broker ~~or salesperson~~ was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Education and Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. ~~The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.~~

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker ~~or salesperson~~ acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow

agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms ~~"licensee", "broker", and "salesperson"~~"licensee" and "broker" shall include only individual persons licensed under this Chapter as ~~brokers or individual persons who were licensed under this Chapter as salespersons prior to April 1, 2006.~~brokers. The terms ~~"licensee", "broker", and "salesperson"~~"licensee" and "broker" shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 12. G.S. 93A-18(8) reads as rewritten:

"(8) Knows of no assets of the judgment debtor and has attempted collection from all other persons who may be liable for the transaction for which the aggrieved person seeks payment from the Real Estate Education and Recovery Fund if there be any such other persons."

SECTION 13. G.S. 93A-20 reads as rewritten:

"**§ 93A-20. Order directing payment out of fund; compromise of claims.**

Applications for payment from the Real Estate Education and Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment."

SECTION 14. G.S. 93A-21 reads as rewritten:

"**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

(a) Payments from the Real Estate Education and Recovery Fund shall be subject to the following limitations:

(1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the ~~judgment;~~judgment.

(2) The fund shall not be liable for more than ~~twenty-five thousand dollars ($25,000)~~fifty thousand dollars ($50,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such ~~transaction; and~~transaction.

(3) ~~The liability of~~ Payment from the fund shall not exceed in the aggregate twenty-five thousand dollars ($25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate ~~fifty thousand dollars ($50,000)~~seventy-five thousand dollars ($75,000) for any one licensee.

(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Education and Recovery Fund

may be equitably resolved. A person who files an application for payment after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount ~~of one thousand five hundred dollars ($1,500) or less,~~which is equal to or less than the maximum amount of money which may be awarded in small claims court under G.S. 7A-210, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee."

SECTION 15. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Education and Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate ~~broker or salesperson,~~broker, any license issued to the broker ~~or salesperson~~ shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker ~~or salesperson~~ shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 16. G.S. 93A-23 reads as rewritten:

"**§ 93A-23. Subrogation of rights.**

When the Commission has paid from the Real Estate Education and Recovery Fund any sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all right, title, and interest in the judgment to the extent of the amount so paid to the Commission and any amount and interest so recovered by the Commission on the judgment shall be deposited in the Real Estate Education and Recovery Fund."

SECTION 17. G.S. 93A-25 reads as rewritten:

"**§ 93A-25. Persons ineligible to recover from fund.**

No real estate broker ~~or real estate salesperson~~ who suffers the loss of any commission from any transaction in which he or she was acting in the capacity of a real estate broker ~~or real estate salesperson~~ shall be entitled to make application for payment from the Real Estate Education and Recovery Fund for the loss."

SECTION 18. G.S. 93A-35(b) reads as rewritten:

"(b) Licenses shall be renewable annually on July 1, provided that a renewal application accompanied by the appropriate renewal fees has been filed not later than June 1 in the form and manner prescribed by the Commission, and provided further that the applicant and school are found to be in compliance with the standards established for issuance of an original license. The Commission may by rule set nonrefundable renewal fees not to exceed one hundred twenty-five dollars ($125.00) for each school location and twenty-five dollars ($25.00) for each real estate ~~salesperson or~~ broker prelicensing and postlicensing course."

SECTION 19. G.S. 93A-41(9) reads as rewritten:

"(9) "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion ~~thereof, including, but not limited to,~~of a time share project. "Time share" shall also include a vacation license, prepaid hotel reservation, club membership, limited partnership, vacation bond, or a plan or system where the right to use a time share unit or units for periods of time is awarded or apportioned on

the basis of points, vouchers, split, divided, or floating ~~use;~~use, even if on a competitive basis with other purchasers;".

SECTION 20. G.S. 93A-42 reads as rewritten:

"**§ 93A-42. Time shares deemed real estate.**

(a) A time share which in whole or in part burdens or pertains to real property in this State is deemed to be an interest in real estate, and shall be governed by the law of this State relating to real estate.

(b) A purchaser of a time share which burdens or pertains to real property located in the State may in accordance with G.S. 47-18 register the time share instrument by which the purchaser acquired the interest and upon such registration shall be entitled to the protection provided by Chapter 47 of the General Statutes for the recordation of other real property instruments. A time share instrument transferring or encumbering a time share shall not be rejected for recordation because of the nature or duration of that estate, provided all other requirements necessary to make an instrument recordable are complied with. An instrument concerning a time share which burdens or pertains to no real property located in this State shall not be recorded in the office of the register of deeds in any county in this State.

(c) The developer shall record or cause to be recorded a time share instrument:

(1) Not less than six days nor more than 45 days following the execution of the contract of sale by the purchaser; or

(2) Not later than 180 days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser shall be placed by the developer with an independent escrow agent upon the expiration of the 10-day escrow period provided by G.S. 93A-45(c).

(d) The independent escrow agent provided by G.S. 93A-42(c)(2) shall deposit and maintain the purchaser's payments in an insured trust or escrow account in a bank or savings and loan association located in this State. The trust or escrow account may be interest-bearing and the interest earned shall belong to the developer, if agreed upon in writing by the purchaser; provided, however, if the time share instrument is not recorded within the time periods specified in this section, then the interest earned shall belong to the purchaser. The independent escrow agent shall return all payments to the purchaser at the expiration of 180 days following the execution of the contract of sale by the purchaser, unless prior to that time the time share instrument has been recorded. However, if prior to the expiration of 180 days following the execution of the contract of sale, the developer and the purchaser provide their written consent to the independent escrow agent, the developer's obligation to record the time share instrument and the escrow period may be extended for an additional period of 120 days. Upon recordation of the time share instrument, the independent escrow agent shall pay the purchaser's funds to the developer. Upon request by the Commission, the independent escrow agent shall promptly make available to the Commission inspection of records of money held by the independent escrow agent.

(e) In no event shall the developer be required to record a time share instrument if the purchaser is in default of the purchaser's obligations.

(f) Recordation under the provisions of this section of the time share instrument shall constitute delivery of that instrument from the developer to the purchaser."

SECTION 21. G.S. 93A-53 reads as rewritten:

"**§ 93A-53. Register of applicants; roster of registrants; registered projects; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for certificates of registration, showing for each the date of application, name, business address, and whether the certificate was granted or refused.

(b) The Executive Director of the Commission shall also keep a current roster showing the name and address of all time share projects registered with the Commission. The roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) ~~On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of time share projects registered with the Commission and a report containing a complete statement of income received by the Commission in connection with the registration of time share projects for the preceding fiscal year ending June 30th attested by the affidavit of the Executive Director of the Commission. The report shall be made a part of those annual reports required under the provisions of G.S. 93A-5.~~The Commission shall include a copy of the roster of time share projects current on the preceding June 30 and a statement of the income received by the Commission in connection with the registration of time share projects during the fiscal year ending on June 30 with the report required by G.S. 93B-2."

SECTION 22. G.S. 93A-54(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(9) Failing to deposit and maintain in a ~~trust or escrow account in an insured bank or savings and loan association in North Carolina~~broker's trust or escrow account as defined by G.S. 93A-6(g) all money received from others in a time share transaction as may be required in G.S. 93A-45 of this Article or failing to place with an independent escrow agent the funds of a time share purchaser when required by G.S. 93A-42(c);

...."

SECTION 23. The Real Estate Commission shall adopt any rules necessary to implement the provisions of Sections 3 and 8 of this act when this act becomes law.

SECTION 24. Sections 23 and 24 of this act are effective when this act becomes law. The remainder of this act becomes effective January 1, 2012.

HOUSE BILL 386:
Real Estate License Law Amendments.-AB

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. Howard, Brubaker	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 386 would make various amendments to the Real Estate Licensing Law relating to licensing requirements, regulation of licensees, the Real Estate Recovery Fund, and the regulation of time shares.***

[As introduced, this bill was identical to S365, as introduced by Sen. Brown, which is currently in Senate Commerce.]

CURRENT LAW: In 2005, the General Assembly amended the Real Estate Licensing Law to eliminate the licensed position of real estate salesperson. On April 1, 2006 all salesperson licenses were converted to broker licenses and the holders of the broker license were classified as provisional brokers.

All provisional brokers were required to complete an additional 90-hour postlicensing course within 3 years after being licensed as a provisional broker in order to become a real estate broker. Failure to complete the postlicensing course within 3 years resulted in the license being cancelled until the course is completed.

BILL ANALYSIS:

Section 1. Removes reference to salesperson and clarifies several exemptions from licensing requirements. The exemption for attorneys applies to active members of the State Bar when performing acts and services that constitute the practice of law under Chapter 84 of the General Statutes. The exemption for trustees applies to written trusts when the trust agreement specifically identifies the trustee, the beneficiary, the trust corpus, and the trustee's authority. The exemption for salaried employees of licensed brokers clarifies the role of a vacation rental agent. The housing authority exemption applies to the sale or lease of property owned by the housing authority or the subletting of property the housing authority holds as tenant.

Section 2. Authorizes the Real Estate Commission to employ attorneys to assist it with the enforcement of the Chapter, with the approval of the Attorney General. The section deletes the requirement that the Attorney General approve fees for services of outside attorneys.

Section 3. Deletes the provision that requires that a provisional broker's license be cancelled if the broker fails to complete the required postlicensing education within three years. The broker's license will now be placed on inactive status until the requirements are satisfied. All licenses that were cancelled after April 1, 2009, will be reinstated on inactive status until the Commission's requirements are met. The Commission is authorized to establish requirements for reinstatement by rule.

The Commission is authorized to determine an applicant's general fitness, including mental and emotional fitness. All criminal records, credit reports and reports related to an applicant's mental and emotional fitness are not public records.

Section 4. Makes technical changes.

Section 5. Conforms the Commission's filing requirement to G.S. 93B-2, which requires that the Commission file an annual and financial report with the Secretary of State, the Attorney General, the Director of the Budget, and the Joint Legislative Administrative Procedure Oversight Committee.

Section 6. Clarifies several actions for which the Commission is authorized to take disciplinary action against a licensee, including the broker's duty to deliver a closing statement to the client. This section also expands the list of crimes a licensee can be disciplined for, if convicted. A licensee who hold another professional license can also be disciplined by the Commission if the licensee has been disciplined by the other board for actions involving dishonesty or malpractice.

This section also adds a requirement that the broker's trust or escrow account must be held in a federally insured depository institution that agrees to make the broker's account available to the Commission's representatives.

Section 7. Requires that the Commission notify the licensee by mail when it subpoenas financial records.

Section 8. Authorizes the Commission to issue a license to an applicant who is licensed in a foreign jurisdiction if the applicant satisfies the requirements for licensure in this State or meets such other requirements as the Commission sets by rule.

Section 9. Deletes references to salespersons.

Section 10. Changes the name of the Real Estate Recovery Fund to the Real Estate Education and Recovery Fund. Authorizes the Commission to use money from the Fund to create and provide educational materials and services to licensees and the public. The Commission may not use funds if the use would reduce the balance of the Fund below $200,000.

Section 11. Makes conforming changes and deletes the requirement that the judgment debtor be served with a copy of an application for recovery from the Fund.

Section 12 and 13. Make conforming changes.

Section 14. Raises the maximum amount that can be recovered from the Fund per transaction from $25,000 to $50,000. Raises the limit on payments in the aggregate for one licensee from $50,000 to $75,000.

Sections 15, 16, 17, and 18. Make conforming changes.

Section 19. Clarifies the definition of the term "time share".

Section 20. Clarifies that an instrument concerning a time share that does not burden or pertain to real property located in the State shall not be recorded in any office of the register of deeds in this State.

Section 21. Directs the Commission to include information related to time shares in the reports required by G.S. 93B-2.

Section 22. Makes it a disciplinary offense for a time share broker to fail to maintain a trust or escrow account in a federally insured depository institution that agrees to make its records available to the Commission.

Section. 23. Directs the Real Estate Commission to adopt rules necessary to implement sections 3 and 8 of the act.

EFFECTIVE DATE: Section 23 is effective when it becomes law. The remainder becomes effective January 1, 2012.

Karen Cochrane-Brown, counsel to House Commerce and Job Development, substantially contributed to this summary.

H386-SMSU-40(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 585
Committee Substitute Favorable 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H585-CSMA-28 [v.3]

6/13/2011 3:56:14 PM

Short Title: Clarification of Manufactured Home Titling. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CLARIFICATION FOR THE RETITLING OF A MANUFACTURED HOME THAT IS REMOVED FROM REAL PROPERTY AFTER THE ORIGINAL TITLE HAS BEEN CANCELLED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-109.2(d) reads as rewritten:

"(d) Application for Title After Cancellation. – If the owner of a manufactured home whose certificate of title has been cancelled under this section subsequently seeks to separate the manufactured home from the real property, the owner may apply for a new certificate of title. The owner must submit to the Division an affidavit containing the same information set out in subsection (b) of this section, verification that the manufactured home has been removed from the real property, verification of the identity of the current owner of the real property upon which the manufactured home is located, and written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed. The Commissioner may require evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent. Upon receipt of this information, together with a title application and required fee, the Division ~~is authorized to issue a new title for the manufactured home.~~shall issue a new title for the manufactured home in the name of the current owner of the real property upon which the manufactured home is located, or if the title has been cancelled by a leasehold tenant and the tenancy has not terminated or expired, in the name of the leasehold tenant."

SECTION 2. This act becomes effective August 1, 2011, and applies to titles issued on or after that date.

HOUSE BILL 585:
Clarification of Manufactured Home Titling

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. Pridgen, Hastings, Jones	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Second Edition H585-CSMA-28		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 585 would require verification of the identity of the owner of real property upon which a manufactured home is located for retitling of the manufactured home. The PCS would also require the Division of Motor Vehicles to issue the title in the name of the owner of the real property where the manufactured home is located or in the name of the leasehold tenant.***

CURRENT LAW: An individual can surrender the title to a manufactured home if the manufactured home qualifies as real property. A manufactured home can qualify as real property under G.S. 105-273 if it meets all of the following requirements:

- It is a residential home.
- It has the moving hitch, wheels, and axels removed.
- It is placed upon a permanent foundation either on land owned by the owner of the manufactured home, or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years and the lease expressly provides for the disposition of the manufactured home upon termination of the lease.

To surrender the title, an owner must submit an affidavit to the Division of Motor Vehicles that provides the following information:

- The manufacturer, model number, VIN number, and serial number of the manufactured home.
- A legal description of the real property where the home is placed and statement that the owner of the real property also owns the home or that the owner of the manufactured home has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed.
- A description of any security interests in the manufactured home.

After cancelling the title, the affidavit is returned to the owner of the manufactured home. The owner must then file the affidavit with the register of deeds where the real property is located. After the affidavit is filed, the manufactured home becomes an improvement to the real property.

The owner of a manufactured home that has cancelled the certificate of title may apply for a new title after the cancellation if the owner seeks to separate the manufactured home from the real property. The owner must submit the same information required in the affidavit above, as well as the following:

- Verification the manufactured home has been removed from the real property.
- Written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed.

- Evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent

BILL ANALYSIS: The PCS for House Bill 585 would require additional information for the issuance of a new title for a manufactured home after the title has been cancelled. Along with the current information required by statute, an application for a new title must provide verification of the identity of the current owner of the real property upon which the manufactured home is located. The PCS would also require the Division to issue the new title in the name of the current owner of the real property upon which the manufactured home is located, or in the name of the leasehold tenant if the title was cancelled by a leasehold tenant and the tenancy has not terminated.

EFFECTIVE DATE: This act is effective August 1, 2011 and applies to titles issued on or after that date.

H585-SMSU-39(CSMA-28) v1

HOUSE BILL 616

Short Title:	Amend Engineers and Surveyors Laws.	(Public)
Sponsors:	Representative Gillespie (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO THE REGULATION OF ENGINEERING AND LAND SURVEYING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

...

(8a) Professional engineer, retired. – A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board after review of record, including any disciplinary action, to be granted the use of the honorific title "Professional Engineer, Retired".

...

(9a) Professional land surveyor, retired. – A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board after review of record, including any disciplinary action, to be granted the use of the honorific title "Professional Land Surveyor, Retired".

...."

SECTION 2. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as "Fund of the Board of Examiners for Engineers and Surveyors" and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of this fund on the warrant signed by the secretary of the Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Examiners for Engineers and Surveyors, conditioned upon the faithful performance of the duties assigned. The premium on the bond is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive director certain

routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the ~~unanimous~~ majority approval of the Board."

SECTION 3. G.S. 89C-12 read as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of licensure granted, and the date licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all licensed professional engineers and all licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each year. ~~The roster shall be printed by the Board out of the Board's fund and distributed as described in the Board's rules.~~ On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of the report, together with a complete statement of the receipts and expenditures of the Board attested by the chair and the secretary and a copy of the roster of licensed professional engineers and professional land surveyors."

SECTION 4. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for licensure.**

(a) Engineer Applicant. – To be eligible for licensure as a professional engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering must submit three character references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for licensure:

(1) As a professional engineer (shall meet one):

a. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of ~~Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be licensed without further examination.~~any foreign country possessing credentials that, based on verifiable evidence, in the opinion of the Board, of a standard not lower than that in effect in this State at the time the certificate was issued, may upon application, be licensed without further examination, except as required to examine the applicant's knowledge of laws, rules, and requirements unique to North Carolina.

~~A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of Examiners for Engineering and Surveying whose~~

~~qualifications meet the requirements of this Chapter, may upon application, be licensed without further examination.~~

b. E.I. Certificate, Experience, and Examination. – A holder of a certificate of engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to the principles and practice of engineering examination. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. – A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, ~~and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering,~~shall be admitted to the fundamentals of engineering examination, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character that indicates to the Board that the applicant may be competent to practice engineering, the principles and practice of engineering examination. Upon passing the examinations, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. – A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board ~~and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering,~~ shall be admitted to the fundamentals of engineering examination and with a specific record of an additional eight years or more of progressive experience on engineering projects of a grade and character that indicates to the Board that the applicant may be competent to practice engineering, the principles and practice of engineering examination. Upon passing the examinations, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

e. Long-Established Practice. – A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to the principles and practice of engineering examination. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work which the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an engineering intern (shall meet one):

a. Graduation and Examination. – A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who ~~has attained senior status in an accredited engineering program,~~is graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered, shall be admitted to the fundamentals of engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineering intern if the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. – A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to the fundamentals of engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed, the applicant shall be certified as an engineering intern if the applicant is otherwise qualified.

(b) Land Surveyor Applicant. – To be eligible for admission to examination for land surveyor intern or professional land surveyor, an applicant must be of good character and reputation and shall submit five references with the application for licensure as a land surveyor, two of which references shall be professional land surveyors having personal knowledge of the applicant's land surveying experience, or in the case of an application for certification as a land surveyor intern by three references, one of which shall be a licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land surveyor or for certification as a land surveyor intern respectively:

(1) As a professional land surveyor (shall meet one):

a. Rightful possession of a bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of two years or more of progressive practical experience, one year of which shall have been under a practicing professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully

passed the first examination on or before January 1, 2013, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of four years of progressive practical experience, three years of which shall have been under a practicing licensed land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

c. Repealed by Session Laws 1998-118, s. 11.

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing licensed land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, 16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination upon graduation from high school or the

completion of a high school equivalency certificate and successfully completing 10 years of progressive practice experience, six of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United ~~States will be given comity considerations. However, the applicant may be asked~~States or the District of Columbia, possessing credentials that, based on verifiable evidence, in the opinion of the Board, of a standard not lower than that in effect in this State at the time the certificate was issued, may upon application, be licensed without further examination, except to take any examinations as the Board requires to determine the applicant's qualifications, but in any event, the applicant shall be required to pass an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the principles and practice of land surveying examination and the fundamentals of land surveying examination. Upon satisfactorily passing the examinations, the applicant shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. – Any person presently licensed to practice professional engineering under this Chapter shall upon application be licensed to practice land surveying, providing a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. – Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;

3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing a written and oral examination as required by the Board.
b. Repealed by Session Laws 2005-296, s. 1.
c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of 10 years of progressive, practical experience, six years of which shall have been under a practicing licensed land surveyor and satisfactorily passing any oral and written examinations required by the Board.
d. Graduation and examination. – A graduate of a surveying curriculum or other equivalent curriculum in surveying approved by the Board or a student who ~~has attained senior status~~is graduating within two semesters, or the equivalent, of the semester in which the fundamentals of surveying examination is administered, in an accredited surveying program of four years or more shall be admitted to the fundamentals of surveying examination. The applicant shall be notified if the examination was passed or not passed, and if passed the applicant shall be certified as a surveying intern if the applicant is otherwise qualified.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised."

SECTION 5. G.S. 89C-21(a) reads as rewritten:

"(a) The Board may reprimand the licensee, suspend, refuse to renew, refuse to reinstate, or revoke the certificate of licensure, require additional education or, as appropriate, require reexamination, for any engineer or land surveyor, who is ~~found:~~found guilty of any of the following:

(1) ~~Guilty of the practice of any fraud~~Fraud or deceit in obtaining or renewing a certificate of licensure or certificate of authorization.

(2) ~~Guilty of any gross negligence~~Gross negligence, incompetence, or misconduct in the practice of the profession.

(3) ~~Guilty of any felony or~~Conviction of, or entry of a plea of guilty or nolo contendere to, any crime that is a felony, whether or not related to the practice of engineering or surveying; conviction of, or entry of a plea of guilty or nolo contendere to, any crime, whether a felony, misdemeanor, or otherwise, where an essential element of the crime is dishonesty or when the crime is directly related to the practice of engineering or surveying; or conviction of, or entry of a plea of guilty or nolo contendere, of any crime involving moral turpitude.

(4) ~~Guilty of violation~~ Violation of any provisions of this Chapter, the Rules of Professional Conduct, or any rules as adopted by the Board.

(5) ~~To have been~~ Being declared insane or incompetent by a court of competent jurisdiction and ~~has~~ having not later been lawfully declared sane or competent.

(6) ~~Guilty of professional~~Professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice engineering or land surveying and suspend the license during any such period."

SECTION 6. G.S.89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action – Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or ~~violation~~ violations of this Chapter, the rules of professional conduct, or any rules adopted by the Board against any Board ~~registrant.~~licensee. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the Board.

(b) All charges, unless dismissed by the Board as unfounded or ~~trivial,~~trivial or unless settled informally, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, refuse to reinstate, or revoke the licensee's ~~certificate.~~certificate, require additional education or, as appropriate, require reexamination.

(d) A licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient reasons as it may determine, reissue a certificate of licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

SECTION 7. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

...

~~(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that the person is licensed to practice the profession in the person's own state or country, in which the requirements and qualifications for obtaining a certificate of~~

~~licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit.~~

~~(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny licensure; provided, however, the person shall have filed an application for licensure as a professional engineer or professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that the person is licensed to practice professional engineering or professional land surveying in the person's own state or country in which the requirements and qualifications for obtaining a certificate of licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit.~~

...."

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 616:
Amend Engineers and Surveyors Laws

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 11, 2011
Introduced by:	Rep. Gillespie	**Prepared by:**	Janice Paul
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 616 would amend G.S. Chapter 89C, the laws relating to the regulation of engineering and land surveying.***

BILL ANALYSIS:

Section 1 would require the State Board of Examiners for Engineers and Surveyors ("Board") to review an applicant's record, including disciplinary actions, prior to allowing use of the title, "Professional Engineer, Retired" or "Professional Land Surveyor, Retired."

Section 2 would allow delegation of certain duties to the Board's executive director upon a majority, rather than a unanimous, vote of the Board.

Section 3 would delete the requirement that the Board print and distribute a roster of all licensed professional engineers and land surveyors.

Section 4 would:

- Permit licensure as an engineer or as a land surveyor by comity or endorsement if the person possesses credentials based on verifiable evidence of a standard that the Board deems comparable to North Carolina standards.
- Expand the comity provisions for engineers to those holding a license from any foreign country, not just Canada.
- Expand the comity provisions for land surveyors to those holding a license from the District of Columbia in addition to any U.S. state.
- Allow graduates of Board-approved programs to sit the "fundamentals of engineering" exam *prior to* meeting the experience prerequisites to take the "principles and practice of engineering" exam.
- Allow a student within two semesters of graduation to sit the applicable "fundamentals" exam in order to be certified as an engineering or land surveying intern.

Section 5 would enlarge the Board's disciplinary powers to include refusal to reinstate, or to require additional education of, any engineer or land surveyor who commits or is found legally responsible for certain acts or offenses, violates specified rules or provisions, or has been found professionally incompetent, or legally insane or incompetent.

Section 6 would clarify the charges and procedure relating to disciplinary action.

Section 7 would delete the limitations on Board jurisdiction over individuals who practice engineering or land surveying for a total of 90 or fewer days in any calendar year.

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

H616-SMTJ-16(e1) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 616

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H616-ARC-41 [v.1]

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

Date June 14 ,2011

Senator Hise

moves to amend the bill on page 3, by inserting the following after line 51:

"f. Full-time faculty. – Full-time engineering faculty members who teach in an approved engineering program offering a four-year or more degree approved by the Board, may request and be granted waiver of the fundamentals of engineering examination. The faculty applicant shall document that the degree meets the Board's requirement. The faculty applicant shall then be admitted to the principles and practice of engineering examination.

g. Doctoral degree. – A person possessiong an earned doctoral degree in engineering from an institution in which the same discipline undergraduate engineering program has been accredited by ABET (EAC) may request and be granted waiver of the fundamentals of engineering examination. The doctoral degree applicant shall document that the degree meets the Board's requirement. The doctoral degree applicant shall then be admitted to the principles and practice of engineering examination.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 648
Committee Substitute Favorable 4/20/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H648-CSTD-45 [v.2]

6/13/2011 1:41:52 PM

Short Title: Improve Enforcement/General Contractor Laws. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND AMEND THE LAWS PERTAINING TO EXCEPTIONS AND BUILDING PERMITS AS RELATED TO GENERAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-1 reads as rewritten:

"**§ 87-1. "General contractor" defined; exceptions.**

(a) For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars ($30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

(b) This section shall not apply to the following:

(1) ~~persons or firms~~Persons, firms, or corporations furnishing or erecting industrial equipment, power plan equipment, radial brick chimneys, and monuments.

(2) ~~This section shall not apply to any person or firm~~Any person, firm, or corporation who constructs or alters a building on land owned by that person, ~~firm~~ firm, or corporation provided ~~such~~ (i) the building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and ~~provided further that, if such~~ (ii) the person, firm, or corporation complies with G.S. 87-14. If the building is not occupied solely by ~~such~~ the person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend ~~such~~ the building solely for occupancy by that person and his family, firm, or corporation.

(3) ~~This section shall not apply to any~~Any person engaged in the business of farming who constructs or alters a building on land owned by that person

and used in the business of farming, when ~~such~~ the building is intended for use by that person after completion."

SECTION 2. G.S. 87-14 reads as rewritten:

"**§ 87-14. Regulations as to issue of building permits.**

(a) Any person, ~~firm~~ firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, ~~town~~ town, or county in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, ~~grading~~ grading, or any improvement or structure where the cost thereof is to be thirty thousand dollars ($30,000) or more, shall, before ~~he be~~being entitled to the issuance of ~~such permit,~~a permit, satisfy the following:

(1) ~~furnish~~ Furnish satisfactory proof to ~~such~~ the inspector or authority that ~~he~~ the person seeking the permit or another person contracting to superintend or manage the construction is duly licensed under the terms of this Article to carry out or superintend the ~~same,~~construction or is exempt from licensure under G.S. 87-1(b). If an applicant claims an exemption from licensure pursuant to G.S. 87-1(b)(2), the applicant for the building permit shall execute a verified affidavit attesting to the following:

a. That the person is the owner of the property on which the building is being constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation.

b. That the person will personally superintend and manage all aspects of the construction of the building and that the duty will not be delegated to any other person not duly licensed under the terms of this Article.

c. That the person will be personally present for all inspections required by the North Carolina State Building Code, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

The building inspector or other authority shall transmit a copy of the affidavit to the Board, who shall verify that the applicant was validly entitled to claim the exemption under G.S. 87-1(b)(2). If the Board determines that the applicant was not entitled to claim the exemption under G.S. 87-1(b)(2), the building permit shall be revoked pursuant to G.S. 153A-362 or G.S. 160A-422.

(2) ~~and that he has paid the license tax required by the Revenue Act of the State of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied, and that he~~ Furnish proof that the person has in effect Workers' Compensation insurance as required by Chapter 97 of the General ~~Statutes;~~Statutes.

(b) ~~and it~~It shall be unlawful for ~~such~~ the building inspector or other authority to issue or allow the issuance of ~~such~~ a building permit pursuant to this section unless and until the applicant has furnished evidence that ~~he~~ the applicant is either exempt from the provisions of this ~~Article~~ Article and, if applicable, fully complied with the provisions of subdivision (a)(1) of this section, or is duly licensed under this Article to carry out or superintend the work for which permit has been applied; ~~and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit;~~ and further, that the applicant has in effect Workers' Compensation insurance as required by Chapter 97 of the General Statutes. Any building inspector or other ~~such~~ authority who is subject to and violates the terms of this section shall be guilty of a Class 3 misdemeanor and subject only to a fine of not more than fifty dollars ($50.00)."

SECTION 3. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes."

SECTION 4. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes."

SECTION 5. G.S. 87-10(e) reads as rewritten:

"(e) A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid 60 days from that date unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board. The fee shall not exceed one hundred twenty-five dollars ($125.00) for an unlimited license, one hundred dollars ($100.00) for an intermediate license, and seventy-five dollars ($75.00) for a limited license. No later than November 30 of each year, the Board shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each general contractor licensed pursuant to this Article. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Board. Renewal applications received by the Board after January shall be accompanied by a late payment of ten dollars ($10.00) for each month or part after January. After a lapse of ~~two~~ four years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 648:
Improve Enforcement/General Contractor Laws

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. Hastings, Hager	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition H648-CSTD-45		

SUMMARY: ***The PCS to House Bill 648 amends the statutes dealing with general contractors by modifying the requirements for claiming the owner's exception to the licensing requirement. The PCS makes the following changes:***

- ***Clarifies that an owner of a property that obtains a building permit under the owner exception is not required to be personally present at all inspections, if the plans for the building were drawn and sealed by a licensed architect.***
- ***Amends the law for licensing of general contractors to provide that an applicant that allows his or her license to lapse for more than 4 years (was 2), must apply for a license as a new applicant rather than a renewal applicant.***

[As introduced, this bill was identical to S708, as introduced by Sens. Hise, Tucker, White, which is currently in House Environment.]

CURRENT LAW: Individuals or firms that construct, superintend, or manage the construction of any building, highway, public utility, grading, improvement or structure where the cost exceeds $30,000 or builds a manufactured modular building that meets the State Building Code is a "general contractor" engaged in general contracting in North Carolina. Subject to some exceptions, general contractors must be licensed under Article 1 of Chapter 87.

There are three exceptions to the definition of general contractor. Under the "owner exception," the definition of "general contractor" does not apply to any person, firm, or corporation who constructs or alters a building on land owned by that person, firm, or corporation, provided such building is intended solely for occupancy by that person and his family, firm, or corporation after completion.

BILL ANALYSIS: House Bill 648 would do all of the following:

Section 1 clarifies the exceptions to the definition of general contractor. Also clarifies that individuals or firms that fall under the owner exception must comply with G.S. 87-14, which provides regulations for the issuance of building permits for general contractors.

Section 2 amends G.S. 87-14 to provide that if a person applies for a building permit under the owner exception, then the applicant must execute a verified affidavit attesting to the following:

- The person is the owner of the property on which the building is constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation.
- The person will personally manage all aspects of the construction and that the duty will not be delegated to any other person not duly licensed.
- The person will be personally present for all inspections required by the North Carolina State Building Code.

This section also directs the building inspector or other authority to transmit a copy of the affidavit to the Board who will verify the exemption or revoke the building permit if the applicant is not exempt.

Sections 3 and 4 amend the statutes dealing with inspections of work in progress in counties and cities to provide that no inspection will be conducted without the owner being present if the permit was obtained by an owner exempt from licensure under G.S. 87-1(b)(2).

Section 5 amends the laws concerning licensure of general contractors. Currently, general contractors may renew a license that has lapsed, if the lapse is no longer than 2 years. This section would allow renewal after a lapse of 4 years.

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

Brad Krehely, counsel to House Commerce, substantially contributed to this summary.
H648-SMTD-92(CSTD-45) v1

HOUSE BILL 686
Committee Substitute Favorable 5/23/11

Short Title: Payable on Death Accounts. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A PAYABLE ON DEATH ACCOUNT NAMING AN ENTITY OTHER THAN A NATURAL PERSON AS BENEFICIARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-146.2 is repealed, and a new G.S. 53-146.2A is enacted to read:

"**§ 53-146.2A. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the bank.

(2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 53-146.1.

(3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.

(4) If the beneficiary or beneficiaries are natural persons, there may be one or more beneficiaries and the following shall apply:

a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account, and payment by the bank to such owner shall be a total discharge of the bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 53-146.1, and payment by the bank to the owners or any of the owners shall be a total discharge of the bank's obligation as to the amount paid.

b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the bank shall transfer the funds in the account to the general guardian or guardian of the

estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.

(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 53-146.1, in the case of multiple owners.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The natural person or natural persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below; the language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account:

'BANK (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 53-146.2A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 53-146.2A that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the bank (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

_____

_____

(b) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of such accounts as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

SECTION 2. G.S. 54B-130 is repealed and a new G.S. 54B-130A is enacted to read:

"**§ 54B-130A. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the association containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the association.

(2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54B-129.

(3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.

(4) If the beneficiary or beneficiaries are natural persons, there may be one or more beneficiaries and the following shall apply:

a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account, and payment by the association to such owner shall be a total discharge of the association's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54B-129, and payment by the association to the owners or any of the owners shall be a total discharge of the association's obligation as to the amount paid.

b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the association shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the association shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.

(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 54B-129, in the case of multiple owners.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the

beneficiary or beneficiaries upon the death of the last surviving owner, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the association of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the association for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The natural person or natural persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below; the language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account:

'SAVINGS AND LOAN (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 54B-130A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54B-130A that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the association (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

_____

_____'

(b) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of such accounts as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

SECTION 3. G.S. 54C-166 is repealed and a new G.S. 54C-166A is enacted to read:

"**§ 54C-130A. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the savings bank containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the savings bank.

(2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54C-165.

(3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.

(4) If the beneficiary or beneficiaries are natural persons, there may be one or more beneficiaries and the following shall apply:

a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account, and payment by the savings bank to such owner shall be a total discharge of the savings bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54C-165, and payment by the savings bank to the owners or any of the owners shall be a total discharge of the savings bank's obligation as to the amount paid.

b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the savings bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the savings bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.

(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 54C-165, in the case of multiple owners.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the savings bank of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the savings bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The natural person or natural persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below; the language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account:

'SAVINGS BANK (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 54C-166A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54C-166A that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the savings bank (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

_____,

_____

(b) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of such accounts as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

SECTION 4. G.S. 54-109.57 is repealed and a new G.S. 54-109.57A is enacted to read:

"**§ 54-109.57A. Payable on Death (POD) accounts.**

(a) Shares may be issued to and deposits received from any natural person or natural persons establishing an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries. Such account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the credit union.

(2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54-109.58.

(3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.

(4) If the beneficiary or beneficiaries are natural persons, there may be one or more beneficiaries and the following shall apply:

a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account, and payment by the credit union to such owner shall be a total discharge of the credit union's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54-109.58, and payment by the credit union to the owners or any of the owners shall be a total discharge of the credit union's obligation as to the amount paid.

b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the credit union shall

transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the credit union shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.

(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 54-109.58, in the case of multiple owners.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the credit union of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The natural person or natural persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below; the language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account:

'CREDIT UNION (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 54-109.57A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54-109.57A that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the credit union (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

_____

_____'

(b) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of such accounts as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

SECTION 5. This act becomes effective October 1, 2011, and applies to agreements executed on or after that date. Agreements executed prior to October 1, 2011, remain subject to the laws in effect at the time the parties executed the agreement.

HOUSE BILL 686:
Payable on Death Accounts

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Rep. Hastings	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 686 expands the permissible beneficiaries of a payable on death account (POD) to include entities such as a charitable corporation or a private trust.***

CURRENT LAW: Financial institutions may offer their customers payable on death accounts (POD) under statutory rules. G.S. 53-146.2 (bank POD account); G.S. 54-109.57 (credit union POD account); G.S. 54B-130 (savings and loan assn. POD account); G.S. 54C-166 (savings bank POD account). The POD account has the following incidents of ownership:

(1) Any owner during the owner's lifetime may change any designated beneficiary.

(2) Multiple owners own the account as joint tenants with right of survivorship.

(3) Any owner may withdraw funds.

(4) If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship.

(5) If any owners survive the last surviving beneficiary, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners.

(6) If only one beneficiary is living and that beneficiary is a minor at the death of the last surviving owner, the bank shall transfer the funds in the account to the general guardian, guardian of the estate, or, if no guardian has been appointed, to an interest bearing account until the minor reaches the age of majority.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest.

The statutory POD account is not exclusive, and financial institutions can offer accounts with different incidents of ownership.

BILL ANALYSIS: House Bill 686 would expand the permissible beneficiary of a POD account to include any entity other than a natural person. House Bill 686 would limit the POD account to a single beneficiary if an entity is named beneficiary. The incidents of ownership for an account with an entity named beneficiary would be identical for POD accounts with natural persons as beneficiaries except numbers (4), (5), and (6) are modified because entities do not have a limited life. If the entity named beneficiary ceases to exist before the death of the last owner, the POD account would become an individual account of the owner, or a joint account with right of survivorship of the owners.

BACKGROUND: Current law does not contemplate entities to be named beneficiaries of statutory POD accounts. House Bill 686 would allow POD accounts to be given to entities such as charities, private trusts, or corporations.

EFFECTIVE DATE: The bill would become effective October 1, 2011. Statutory POD accounts created prior to October 1, 2011 would remain subject to the laws in effect at the time the parties executed the agreement.

Greg Roney, counsel to House Banking, substantially contributed to this summary.

H686-SMSU-41(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 806
Committee Substitute Favorable 4/27/11
Third Edition Engrossed 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H806-CSTD-51 [v.2]

6/13/2011 2:00:29 PM

Short Title: Zoning St. of Limit./Ag. Dist. Change. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT CHANGING THE STATUTE OF LIMITATIONS AND REPOSE FOR CHALLENGING ZONING ORDINANCES, CLARIFYING THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO ENFORCEMENT ACTIONS OR ADMINISTRATIVE APPEALS AND TO PROHIBIT SPECIFIED ZONING ORDINANCES AFFECTING SINGLE-FAMILY DETACHED RESIDENTIAL USES ON LOTS GREATER THAN TEN ACRES IN AGRICULTURAL ZONING DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-54 is amended by adding a new subdivision to read:

"(10) Actions contesting the validity of any zoning or unified development ordinance or any provision thereof adopted under Part 3 of Article 18 of Chapter 153A or Part 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law, other than an ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request. Such an action accrues when the party bringing such action first has standing to challenge the ordinance."

SECTION 2. G.S. 1-54.1 reads as rewritten:

"**§ 1-54.1. Two months.**

Within two months an action contesting the validity of any ~~zoning~~ ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request ~~amendment thereto adopted by a county~~ under Part 3 of Article 18 of Chapter 153A of the General Statutes ~~or other applicable law or adopted by a city under~~ or Part 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law. Such an action accrues upon adoption of such ordinance or amendment."

SECTION 3. G.S. 153A-348 reads as rewritten:

"**§ 153A-348. Statute of limitations.**

(a) A cause of action as to the validity of any ~~zoning ordinance, or amendment thereto,~~ ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request adopted under this Part or other applicable law shall accrue upon adoption of ~~the ordinance, or amendment thereto,~~ such ordinance and shall be brought within two months as provided in G.S. 1-54.1.

(b) Except as otherwise provided in subsection (a) of this section, an action challenging the validity of any zoning or unified development ordinance or any provision thereof adopted under this Part or other applicable law shall be brought within one year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance.

(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance from raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination."

SECTION 4. G.S. 160A-364.1 reads as rewritten:

"**§ 160A-364.1. Statute of limitations.**

(a) A cause of action as to the validity of any ~~zoning ordinance, or amendment thereto,~~ ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district request adopted under this Article or other applicable law shall accrue upon adoption of ~~the ordinance, or amendment thereto,~~ such ordinance and shall be brought within two months as provided in G.S. 1-54.1.

(b) Except as otherwise provided in subsection (a) of this section, an action challenging the validity of any zoning or unified development ordinance or any provision thereof adopted under this Article or other applicable law shall be brought within one year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance.

(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance from raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination."

SECTION 5. G.S. 153A-340 is amended by adding a new subsection to read:

"(j) An ordinance adopted pursuant to this section shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than 10 acres in size in zoning districts where more than fifty percent (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction shall not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. An ordinance adopted pursuant to this section shall not require that a lot greater than 10 acres in size have frontage on a public road or county-approved private road, or be served by public water or sewer lines, in order to be developed for single-family residential purposes."

SECTION 6. This act becomes effective July 1, 2011, but the provisions of Sections 1 through 4 of this act, to the extent they effect a change in existing law, shall not apply to litigation pending on that date. Upon the effective date, any ordinance provision that is inconsistent with the provisions of Section 5 of this act shall be void and unenforceable.

HOUSE BILL 806:
Zoning St. of Limit./Ag. Dist. Change

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 14, 2011
Introduced by:	Reps. Jordan, Stam, Moffitt, Stevens	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H806-CSTD-51		

SUMMARY: ***The PCS Bill 806 would change the statute of limitations and repose for challenging zoning ordinances, clarifying the applicability of the statute of limitations to enforcement actions or administrative appeals and to prohibit specified zoning ordinances affecting single-family detached residential uses on lots greater than 10 acres in agricultural zoning districts. The PCS makes a technical change only.***

BILL ANALYSIS:

Section 1 of the PCS would change the statute of limitations for actions contesting the validity of any zoning or unified development ordinance or any provision thereof, other than an ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request, to 1 year from when the party bringing the action first has standing to challenge the ordinance.

Section 2 would change the current 2 month statute of limitation to only apply to ordinances adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request and would provide that the action accrues upon adoption of the ordinance or amendment.

Sections 3 & 4 would make changes in G.S. Chapters 153A and 160A to conform to the changes in Sections 1 & 2 of the PCS. These sections would also clarify that the statute of limitations provisions would not bar a party from raising the invalidity of an ordinance as a defense.

Section 5 would prohibit the adoption of an ordinance that would prohibit single-family detached residential uses on lots greater than 10 acres in zoning districts where more than 50% of the land is in use for agricultural or silvicultural (forestry) purposes. This section would also prohibit the adoption of an ordinance that would require lots greater than 10 acres have frontage on a public road or county approved private road or be served by public water or sewer lines in order to be developed for single-family residential purposes.

EFFECTIVE DATE: This act becomes effective July 1, 2011, but the provisions of Sections 1 through 4 of this act, to the extent they effect a change in existing law, shall not apply to litigation pending on that date. Upon the effective date, any ordinance provision that is inconsistent with the provisions of Section 5 of this act shall be void and unenforceable.

Susan Sitze, counsel to House Judiciary, substantially contributed to this summary.

H806-SMTD-93(CSTD-51) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 806

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H806-ATD-123 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H806-CSTD-51

Date June 14 ,2011

Senator Clodfelter

moves to amend the bill on page 1, line 16, by deleing the term "ordinance." and substituting the phrase "ordinance; provided that, a challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.";

and on page 2, line 5, and on page 2, line 25, by deleting the term "ordinance." and substituting the phrase "ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.";

and on page 2, line 13, and on page 2, line 33, by deleting the term "determination." and substituting the phrase "determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged deft in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 484

Short Title:	Transfer Emergency Foreclosure Program to HFA.	(Public)
Sponsors:	Representative Brubaker (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development.	

March 29, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

The following definitions apply throughout this Article:

...

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

...."

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

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

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

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

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

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

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

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

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Office of the Commissioner of ~~Banks,~~ Banks and the Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining ~~upon the expiration of the State Home Foreclosure Prevention Project~~ in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

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

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

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

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

SECTION 5. G.S. 45-106 reads as rewritten:

"**§ 45-106. (For expiration date, see note) Use and privacy of records.**

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

SECTION 6. G.S. 53-102 reads as rewritten:

"**§ 53-102. Offices.**

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

SECTION 7. G.S. 122A-5 reads as rewritten:

"**§ 122A-5. General powers.**

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

...

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

...."

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

HOUSE BILL 484: Transfer Emergency Foreclosure Program to HFA

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 13, 2011
Introduced by:	Rep. Brubaker	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

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

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

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

Regarding the acquisition and disposition of property by the Housing Finance Agency, in 2008, the General Assembly amended G.S. 122A-5(26) to provide that the HFA could "acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State." G.S. 53-102 provides that "suitable offices shall be provided to the Commissioner of Banks in a state-owned public building in Raleigh.

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

- Transfers the administration of State Home Foreclosure Prevention Project and Fund to the North Carolina Housing Finance Agency.
- Directs the Commissioner to deposit funds received from mortgage servicers into a separate account and then transfer funds no less than monthly to the Fund.
- Directs funds remaining in the Fund on June 30, 2011 and any funds remaining in the Fund at the expiration of each subsequent fiscal year to the North Carolina Housing Trust Fund until expiration.
- Authorizes the Commissioner to establish and maintain offices as the Commissioner deems necessary, and to acquire, hold, rent, encumber, transfer, convey and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject to approval by the State Banking Commission.

- Deletes the requirement that the Housing Finance Agency comply with Article 6 and Article 7 of Chapter 146 governing the acquisition of office space.

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

H484-SMRC-56(e1) v1

Karen Cochrane-Brown and Brad Krehely substantially contributed to this summary.

HOUSE BILL 654
Second Edition Engrossed 6/2/11

Short Title:	Homeowner/Homebuyer Protection Act.	(Public)
Sponsors:	Representatives McCormick and LaRoque (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"**§ 47G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Covered lease ~~agreement or lease~~ agreement. – A residential lease agreement ~~that is combined with, or is executed concurrently with, an option contract.~~ in which all or some portion of the rental payments made are applied to the purchase price of the real property which is the subject of the covered lease agreement and the covered option contract.

...

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

(5) Option fee. – Any payment, however denominated, made by the option purchaser to the option seller that constitutes the price the option purchaser pays for the right to buy the property at a specified price in the future. Such payment applied at the closing of the property shall not constitute equity and such payment shall not in and of itself create a right of equitable redemption.

..."

SECTION 2. G.S. 47G-7 reads as rewritten:

"**§ 47G-7. Remedies.**

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or ~~equity.~~ equity, including G.S. 75-1.1. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1."

SECTION 3. G.S. 47H-8 reads as rewritten:

"**§ 47H-8. Remedies.**

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ A purchaser may bring an action for the recovery of damages, to rescind a transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or ~~equity.~~ Equity, including G.S. 75-1.1. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1."

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

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

...

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

...

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

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

...

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

...."

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

"**§ 47H-6. Title requirements.**

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

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

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

(3) It was placed on the property by the seller prior to the execution of the contract for deed, if the seller is not a licensed general contractor within the

meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General ~~Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed,~~Statutes, and the seller continues to make timely payments on the outstanding mortgage or ~~encumbrance.~~

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

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

SECTION 5. G.S. 47H-7 reads as rewritten:

"**§ 47H-7. Late fees.**

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

SECTION 6. G.S. 75-120 reads as rewritten:

"**§ 75-120. Definitions.**

The following definitions shall apply in this Article:

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

...

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

a. The real property is the principal residence of the transferor.

b. The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.

c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.

d. The transferor retains ~~an interest in the property conveyed, including~~ a tenancy interest, an interest under a ~~lease-purchase agreement,~~ lease with option to purchase agreement, or an option to reacquire the ~~property, or any other legal, equitable, or possessory interest in the property conveyed.~~property.

...."

SECTION 7. G.S. 75-121 reads as rewritten:

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

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a licensed appraiser. An appraisal to determine the fair market value of the property must be performed no more than 90 days prior to the transfer. ~~The appraisal shall be delivered to the transferor no more than three days after the appraisal is performed and no less than seven days prior to the transfer of the property. This section does not apply to exempt transactions.~~

...."

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

HOUSE BILL 654:
Homeowner/Homebuyer Protection Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 13, 2011
Introduced by:	Reps. McCormick, LaRoque	**Prepared by:**	Kory Goldsmith
Analysis of:	Second Edition		Committee Counsel

SUMMARY: HB654 makes various changes to The Homeowner and Homebuyer Protection Act enacted in 2010.

CURRENT LAW: Chapter 47G - Option to Purchase Contracts Executed with Lease Agreements regulates option contracts, which are contracts containing an option to purchase real property which includes or is combined with, or executed in conjunction with a residential lease agreement. Every option contract must be in writing and contain all the terms agreed to by the parties. The seller must record a copy of the contract or a memorandum of the contract with the register of deeds of the county in which the property is located. If the property is encumbered and the option seller defaults on the loan secured by the property, the purchaser may elect to exercise the option or cancel the contract and receive a refund of the money paid minus an offset for the rental value and for any damages beyond normal wear and tear. A violation of the Chapter is an unfair trade practice under G.S. 75-1.1.

Chapter 47H - Contracts for Deed regulates contracts for deed, which are contracts in which a seller agrees to sell an interest in property to a purchaser and the purchaser agrees to pay the purchase price in 5 or more payments exclusive of the down payment and the seller retains the title to the property as security for the purchaser's obligation under the agreement.

Every contract for deed must be in writing, signed by all parties, and contain all of the terms agreed to. In addition, each contract for deed must contain a number of specific provisions including a description of conditions of the property and a statement of the amount of the lien and the due date of any periodic payments if the property is encumbered and the seller is not a general contractor or a manufactured housing dealer. A seller may not enter into a contract for deed if the seller does not hold title to the property. If the seller's title is encumbered, the seller may only enter a contract for deed if one of the following conditions is met:

- The encumbrance was agreed to by the purchaser to make improvements on the property.
- The encumbrance was placed on the property prior to the contract of deed, if the seller is a licensed general contractor, licensed manufactured home dealer, or licensed real estate broker who continues to make timely payments.
- The encumbrance was placed on the property prior to the contract of deed, if the seller is not a licensed general contractor, licensed manufactured home dealer, or licensed real estate broker, if the lien is attached only to the property sold to the purchaser and the seller continues to make timely payments.

If the property is encumbered by a deed of trust, mortgage, or other encumbrance which constitutes a lien on the property, a seller must notify the purchaser in a separate written disclosure, in 14-point type, boldface capital letters that **THE PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS.** A seller may not charge a late fee in excess of 4% of the past due amount under a contract for deed. A violation would be an unfair trade practice under G.S. 75-1.1

Article 5A of Chapter 75 – Home Foreclosure Rescue Scams prohibits foreclosure rescue transactions by anyone other than the transferor for financial gain or with the expectation of financial gain, unless the transferee pays at least 50% of fair market value of the property when the property is transferred. A foreclosure rescue transaction is a transfer of residential real property, including a manufactured home, which includes all of the following:

- The real property is the principal residence of the transferor;
- The transferor is in default or foreclosure proceedings have been initiated against the property;
- The transferee makes representations that the transfer of the property will prevent foreclosure and enable the transferor to remain in the home; and
- The transferor retains an interest in the property conveyed.

BILL ANALYSIS:

Section 1 amends various definitions contained in Chapter 47G. The definition of "covered lease agreement" is defined as a residential lease agreement where some or all of the rental payments are applies to the purchase price of the property that is the subject of the lease and the option contract. The definition of "option contract" is modified to not include a contract which obligates the buyer to purchase the property even if the obligation is subject to one or more contingencies or unilateral rights to terminate the contract. The definition of "option fee" is modified to prohibit an option fee paid at closing from constituting equity in the property and does not create a right of equitable redemption.

Sections 2 and 3 modify the Remedies provisions of Chapter 47G and 47H to provide that a violation of the Chapter may, but is not conclusively, an unfair and deceptive trade practice subject to treble damages and recovery by the plaintiff of attorney's fees

Section 4 modifies the required contents of a contract for deed by removing the requirement that the seller provide a description of the condition of the property and substitutes that the seller provide a completed residential property disclosure statement as provided in Chapter 47E. Under G.S. 47E-4, a seller may either disclose certain characteristics and conditions or make no representations as to the condition of the property.

Section 5 (misnumbered as Section 4) removes the requirement that all contracts have a separate written disclosure, in 14-point type, boldface capital letters so it only applies to a subset of agreements.

Section 6 (misnumbered as Section 5) increases the maximum permissible late fee from four percent (4%) to five percent (5%) of the amount of payment past due.

Section 7 (misnumbered as Section 6) amends the definition of "default" to remove the requirement that the property owner be at least 60 days delinquent and substitute that a default occurs when a notice of default is filed in the county where the property is located. There is no provision for the filing of a notice of default.

Section 8 (misnumbered as Section 7) removes the requirement that the required appraisal to determine the value of property that is eligible for a foreclosure rescue transaction must be delivered to the transferor no more than 3 days after the appraisal is performed and no less than 7 days prior to the transfer of the property.

EFFECTIVE DATE: The act becomes effective October 1, 2011, and applies to agreements entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 654 DATE 6/14/2011

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) _____

1 moves to amend the bill on page 2, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by changing the Section Number from

4 "14." to "3.5."

5

6

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

PAGES ATTENDING

Date: 6-14

Committee: Commerce **Room:** 1027 11AM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Roger Loesch	Charlotte	Rucho
2 Jamarkus Swinson	Fayetteville	Walters
3 Lauren Kenny	Burlington	Gunn
4 Mallory Battles	Burlington	Gunn
5 Carter Loesch	Charlotte	Rucho
6		
7		
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the eeting or a Sgt. at Arms.

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Senate Commerce Committee — June 14, 2011

Name of Committee — **Date**

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Keri Burke	NWC
	NCPA
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Andrew W. Blair	NCDOT
Harriet Worley	NCDOT
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Miriam Baer	NCREC
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Commerce — June 14, 2011

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David Miner	TRG & NC
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Jake Cashion	NC Chamber
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[signature]	NCLM

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Kenneth Seavy	NCSEA
Mike Brough	Brough Law Firm, Chapel Hill
Mark Mazanek	NCBELS
Robert Gilmore	Campbell Law School
Art Britt	UCDOL
Jennifer Harwood	"
Jane G. Gilchrist	"
Clermont Fraser	NCJC
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Adrian Antam	N.C. B.A.
Jennifer Epperson	NC DOJ
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[illegible]	JP Assoc
Andrew Cagle	NC Sheriffs Assn.
David Farrell	NCLTA
[illegible]	[illegible]
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Tim Kent	NC Beer & Wine
Rene Gutierrez	Latin Am Coalition

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Drew Saunders	ElectriCities
Ziyo Mau	JLF
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Senate Commerce Committee — June 14, 2011

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2011-2012

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SENATE COMMERCE COMMITTEE
Tuesday, May 22, 2012 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on Tuesday, May 22, 2012 in room 1027 of the Legislative Building. Twenty-four members of the committee were present. Senator Brown and Senator Gunn presided as chairs.

S.B. 816 – Banking Law Modernization Act

Senator Brown and Karen Cochrane-Brown, a staff attorney with the Research Division, were recognized to explain the bill which rewrites much of the State's banking law as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws. Notably, Section 3 creates a new section in the General Statutes with new terms and definitions. Paul Stock, representing the Banking Commission, was recognized to answer questions regarding the differences in State and federal law. McNeil Chestnut, Deputy Attorney General, was recognized to answer questions. Senator Vaughan moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 810 – Regulatory Reform Act of 2012

Senator Rouzer was recognized to explain the bill and since a "vast majority" of the bill was technical, asked that Ms. Cochrane-Brown explain it. She stated half of the bill was technical and clarifying changes and that the substantive environmental changes should be explained by Jeff Hudson, an attorney with the Research Division. The bill makes several technical and clarifying changes to the Regulatory Reform Act of 2011 as well as a number of other substantive changes as recommended by the Joint Regulatory Reform Committee. Sharnese Ransom, the legislative liaison with the Department of Health and Human Services, was recognized to answer questions on the submission of reports and to speak in opposition of Section 8 – contested cases involving Medicaid decisions. Dexter Matthews, Division of Waste Management, was recognized to express concern about the closure of oversight departments, well testing and no establishment of rules for the testing of volatile organic compounds in well water. No motion was made on the bill. A copy of the bill and the summary is attached.

The meeting adjourned at 12:08 PM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 22, 2012	11:00 AM	1027 LB

The following will be considered:

TBD

Senator Harry Brown, Chair

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 22, 2012	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 810	Regulatory Reform Act of 2012.	Senator Rouzer Senator Brown Senator Davis
SB 816	Banking Law Modernization Act.	Senator Brown

Senator Harry Brown, Chair

Senate Commerce Committee
Tuesday, May 22, 2012, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 810	Regulatory Reform Act of 2012.	Senator Rouzer Senator Brown Senator Davis
SB 816	Banking Law Modernization Act.	Senator Brown

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, May 22, 2012

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

FAVORABLE

S.B. **816** Banking Law Modernization Act.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

S816 – Sen. Brown

SENATE BILL 816*

Short Title:	Banking Law Modernization Act.	(Public)
Sponsors:	Senators Brown; Bingham, Blake, Brunstetter, Daniel, Davis, Harrington, Hunt, Newton, Preston, Stevens, and Tillman.	
Referred to:	Commerce.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA, AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 10, 12, and 13 of Chapter 53 of the General Statutes are repealed.

SECTION 2. The title of Chapter 53 of the General Statutes reads as rewritten:

"**Chapter 53.**

"~~**Banks.**~~**Regulation of Financial Services.**"

SECTION 3. Chapter 53 of the General Statutes is amended by adding the following new Article to read:

"Article 1A.

"General Provisions.

"**§ 53-1.1. Banking definitions applicable to this Chapter.**

Except as otherwise provided by law, the definitions contained in G.S. 53C-1-4 shall apply to terms used in this Chapter."

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 53C.**

"**Regulation of Banks.**

"Article 1.

"General Provisions.

"**§ 53C-1-1. Title.**

This Chapter shall be known and may be cited as Regulation of Banks and Other Financial Services.

"**§ 53C-1-2. Scope and applicability of Chapter.**

(a) Unless the context specifies otherwise, this Chapter shall apply to the following:

(1) All existing banks organized or created under the laws of this State.

(2) All banks created under the provisions of Article 3 of this Chapter.

(3) All persons who subject themselves to the provisions of this Chapter.

(4) All persons who become subject to the penalties provided for in this Chapter as a consequence of violating any of the provisions of this Chapter.

(b) Transactions validly entered into before the effective date of this act and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, or

enforced as required or permitted by any statute amended or repealed by the law by which this act was enacted as though the amendment or repeal had not occurred.

(c) Except as restricted by federal law, a federally chartered depository institution that has a branch in this State shall have all the rights, powers, and privileges and shall be entitled to the same exemptions and immunities as banks organized or created under the laws of this State.

(d) Except as restricted by federal law or the laws of another state in which it was organized or created, an out-of-state bank that has a branch in this State shall have, with respect to activities conducted through such branch, all the rights, powers, and privileges and shall be entitled to the same exemptions and immunities as banks organized and created under the laws of this State.

(e) Any reference in this Chapter to a state or federal law, regulation, or agency shall be deemed to refer to any replacement law or regulation or any successor agency, whether or not this Chapter explicitly provides for that reference.

"**§ 53C-1-3. Existing banks; prohibitions, injunctions.**

(a) No depository institution organized or created under the laws of this State may operate as a bank except in accordance with this Chapter. Banks established prior to the effective date of this act may continue operation under their existing organizational documents but shall be subject to all other requirements of this Chapter.

(b) No person shall operate in this State as a "bank," "savings bank," "savings and loan association," "trust company," or otherwise as a depository institution or trust institution unless established as a depository institution or trust institution under the laws of this State or another state or established under federal law. Unless so authorized, no person doing business in this State shall do either of the following:

(1) Use in its name the term "bank," "savings and loan," "savings bank," "banking company," "trust company," or words of similar meaning that lead the public reasonably to believe that it conducts the business of a depository institution or trust institution.

(2) Use any sign, letterhead, circular, or Web site content or advertise or communicate in any manner that would lead the public reasonably to believe that it conducts the business of a depository institution or trust institution.

(c) Upon application by the Commissioner, a court of competent jurisdiction may issue an injunction to restrain any person from violating or from continuing to violate this section.

"**§ 53C-1-4. Definitions and application of terms.**

Unless the context requires otherwise, the following definitions apply in this Chapter:

(1) Acquire. – To obtain the right or power to vote or to direct the voting of voting securities of a bank or holding company as follows:

a. Through a purchase of or share exchange for shares.

b. By reason of an issuance of shares or the exercise of a right under a warrant, option, or convertible security or instrument to acquire shares.

c. Pursuant to an agreement or trust or through any similar transaction, event, or contractual right.

(2) Acting in concert. – Knowing participation in a joint activity or interdependent conscious parallel action toward the common goal of obtaining control of a bank or holding company, whether or not pursuant to an express agreement, including participation in a combination or pooling of voting securities of a bank holding company for such common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or is under common control with another person. Each member of a group of persons acting in concert shall be deemed an affiliate of the group.

(4) Bank. – Any corporation, other than a credit union, savings institution, or trust institution, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies, and making loans.

(5) Banking laws. – All laws which the Commissioner or the OCOB is authorized to enforce under any applicable statute.

(6) Bank operating subsidiary. – A subsidiary that is under the control of a bank and engages only in activities in which a bank may engage pursuant to G.S. 53C-5-1.

(7) Bank premises. – Any improved or unimproved real estate, whether or not open to the public, that is utilized or intended to be utilized by a bank, including additional space to rent as a source of income.

(8) Bank supervisory agency. – Any of the following agencies:

a. The CFPB, FDIC, Federal Reserve Board, OCC, and any successor to these agencies.

b. Any agency of another state with primary responsibility for chartering and supervising depository institutions organized under the laws of that state.

c. Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under the laws of that nation.

(9) Bankers' bank. – As defined in Regulation D of the Federal Reserve Board, 12 C.F.R. § 204.121.

(10) Board of directors. – A governing board of a company that is responsible for policy, oversight, and compliance.

(11) Branch. – An office of any bank or a depository institution organized under the banking laws of the United States, another state, or another sovereign nation, other than that depository institution's principal office, in which deposits are received. A branch may also engage in any of the functions or services authorized to be engaged in by the bank of which it is a branch. The term "branch" does not include a non-branch bank business office, automated teller machine, remote deposit facility, remote service unit, customer-bank communications terminal, point-of-sale terminal, automated banking facility or other direct or remote information processing device or machine, whether manned or unmanned, by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal.

(12) Capital. – An amount equal to the bank's "total capital" as that term is used by the FDIC in 12 C.F.R. Part 325; provided, that if the term "total capital" is replaced by a term including substantially the same elements as "total capital," the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term.

(13) Capital impairment. – The reduction of a bank's capital at any time below its required capital.

(14) Central reserve bank. – A depository institution of which at least fifty percent (50%) of its shares are owned by other depository institutions.

(15) CFPB. – The Consumer Financial Protection Bureau or its successor.
(16) Charter. – A document issued by the Commissioner in accordance with Article 3 of this Chapter permitting a bank to conduct banking business.
(17) Combination. – A merger, share exchange, or transfer or acquisition of all or substantially all assets and liabilities of a person undertaken in compliance with such federal laws and laws of this State or other states as may be applicable.
(18) Commission. – The State Banking Commission provided for in G.S. 53C-2-1.
(19) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-2-2.
(20) Company. – A corporation, limited liability company, partnership, joint venture, business trust, trust, syndicate, association, unincorporated organization, or other form of business entity.
(21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of the voting securities of the person.
(22) Control transaction. – The acquisition of control over a bank or a holding company other than pursuant to a combination.
(23) Credit union. – A credit union as defined in G.S. 54-109.1.
(24) De novo branch. – A branch of a bank or of an out-of-state bank within this State that is established as a branch, and not (i) by virtue of an acquisition of the existing branch of another bank or out-of-state bank, (ii) by a combination involving the bank or out-of-state bank, or (iii) by the conversion of a non-branch bank business office to a branch.
(25) Deposit. – A "deposit" as defined in Section 3(1) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(1).
(26) Deposit insurance. – Insurance of a bank's deposit accounts where the beneficiaries are the holders of the insured accounts.
(27) Depository institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC.
(28) Deputy commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53C-2-3.
(29) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55.
(30) Debt previously contracted (DPC) subsidiary. – A subsidiary of a bank that acquires in good faith an equity ownership interest through foreclosure or other realization on collateral, by way of a compromise of a disputed or contested claim, or to avoid a loss in connection with a debt previously contracted or to which the bank transfers an equity ownership interest so acquired by the bank.
(31) Examination. – A supervisory inspection of a bank, a proposed bank, a holding company, or a branch of an out-of-state bank operating in this State that may include inspection of all relevant information, including information of or about the subsidiaries and affiliates of the bank, proposed bank holding company, or branch. "Examination" also includes an investigation of any person with respect to any violation or suspected violation of any provision of this Chapter by such person, or a review of

facts and circumstances relevant to the Commissioner's consideration of the issuance of an order pursuant to this Chapter.

(32) Equity ownership interest. – Any beneficial equity or similar interest, whether direct or indirect, including shares, limited or general partnership interests, and membership interests in a limited liability company.

(33) Farm credit system institution. – A lending institution regulated by the Farm Credit Administration.

(34) FDIC. – The Federal Deposit Insurance Corporation or its successor.

(35) Federal Reserve Board. – The Board of Governors of the Federal Reserve System or its successor.

(36) Federal savings association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. § 1464.

(37) Federally chartered institution. – A national bank or federal savings association.

(38) Financial subsidiary. – A "financial subsidiary" as defined in 12 U.S.C. § 24a(g).

(39) Holding company. – A company that controls a depository institution or that controls a company that directly or indirectly controls a depository institution.

(40) Immediate family. – An individual's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers and sisters of the individual's spouse; and the spouse of the individual's child, brother, or sister.

(41) Inadequate capital. – An amount of capital equal to at least seventy-five percent (75%) but less than one hundred percent (100%) of required capital.

(42) Individual. – A human being.

(43) Insufficient capital. – An amount of capital less than seventy-five percent (75%) of required capital.

(44) Lower-tier subsidiary. – Any bank operating subsidiary in which a bank subsidiary has an equity ownership interest.

(45) National bank. – A banking association organized under 12 U.S.C. § 21.

(46) Non-branch bank business office. – Any staffed physical location open to the public in this State in which an office of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution that is not a branch, an office of a separately organized subsidiary of such depository institution, or an office of the holding company of such depository institution, at which one or more banking or banking-related products or services are offered, other than the taking of deposits. The provision of remote deposit capture facilities or services by a non-branch bank business office shall not be deemed to be a taking of deposits. Non-branch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof.

(47) North Carolina financial institution. – A bank, savings institution, or trust company organized under the laws of this State. For purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934, any North Carolina financial institution is a banking institution.

(48) OCOB. – The Office of the Commissioner of Banks as provided in G.S. 53C-2-3.

(49) OCC. – The Office of the Comptroller of the Currency or its successor.

(50) Organizational documents. – The charter, certificate of organization, articles of incorporation, articles of association, certificate of limited partnership, bylaws, operating agreement, partnership agreement, and any other similar documents required to be prepared or adopted by a company in connection with its organization, and as thereafter amended from time to time.

(51) Organizational law. – The laws of the jurisdiction of organization of a company applicable to the organization of the company and its governance, including approval of transactions by its board of directors, shareholders, partners, members, or beneficiaries, as applicable.

(52) Organizers. – One or more individuals who are the organizers of a proposed bank responsible for the business of the proposed bank from the filing of the application to the Commission's final decision on the application.

(53) Out-of-state bank. – A bank that is organized, chartered, or created under the laws of a state other than this State and the deposits of which are insured by the FDIC.

(54) Person. – An individual, a company, or a group of persons who are acting in concert.

(55) Plan of conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter.

(56) Practical banker. – An individual who at the time of appointment to the Commission is, or has been during the five years preceding the appointment, a president, chief executive officer, director, or holder of five percent (5%) or more of any class of voting securities of a North Carolina financial institution.

(57) Principal office. – The office that houses the headquarters of a bank.

(58) Public member. – A member of the Commission who is not a practical banker and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution.

(59) Public notice. – Notice to the public of the applicable information specified in this Chapter by (i) a single publication in a newspaper of general circulation in the county in which the bank that is the subject of the publication has its principal office or in such other county as may be directed by the Commissioner to best meet the purposes for which the notice is required and (ii) a posting in the notices section of the Commissioner's Web site for at least 15 days.

(60) Record. – Information, reports, memoranda, charts, letters, messages, extracts, summaries, analyses, compilations, transaction documentation, account statements, financial statements, and other documents, including customer financial and other information, whether created, transmitted, distributed, retained, or stored in tangible or digital form.

(61) Registered agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company.

(62) Required capital. – Required capital means either of the following:

a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking.

b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards.

(63) Savings institution. – A savings and loan association or a savings bank organized under the laws of this State or of another state, or a federal savings association or savings bank.

(64) Shareholder. – Any person in whose name shares are registered in the records of a corporation, or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(65) Shares. – The units into which the equity ownership interests of a corporation are divided.

(66) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State.

(67) State trust company. – A company organized under the provisions of Article 24 of Chapter 53 of the General Statutes and a trust company previously organized under other provisions of this Chapter to operate only as a trust company and not as a commercial bank.

(68) Subsidiary. – A company over which a bank has control.

(69) This State. – The State of North Carolina.

(70) Trust business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.

(71) Trust company. – A trust institution that is neither a depository institution nor a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), but not including a bank organized under the laws of a territory of the United States.

(72) Trust funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(p).

(73) Trust institution. – Any company lawfully acting as a fiduciary in a state or in a foreign country.

(74) Voting securities. – A security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the company or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.

(75) Well-capitalized. – The term "well-capitalized" has the same meaning as defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.2(r).

(76) Well-managed. – Except as otherwise provided in this Chapter, a company or depository institution is well-managed if the following apply:

a. At its most recent examination, the company or institution received at least a satisfactory composite rating and at least a satisfactory rating for management, if such rating is given.

b. In the case of a company or depository institution that has not received an inspection or examination rating, a company or depository institution is well-managed if the Commissioner has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with any other appropriate bank supervisory agency for the company or institution, that the company or institution is well-managed.

A depository institution that results from the merger of two or more depository institutions that are well-managed shall be considered to be well-managed unless the Commissioner determines otherwise after consulting with any other appropriate bank supervisory agency for each depository institution involved in the merger. A depository institution that results from the merger of a depository institution that is well-managed with one or more depository institutions that are not well-managed or have not

been examined shall be considered to be well-managed if the Commissioner determines, after a review of the managerial and other resources of the resulting depository institution and after consulting with any other appropriate bank supervisory agency for the institutions involved in the merger, as applicable, that the resulting institution is well-managed.

"**§ 53C-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be invalid as to any person or circumstance, or to be preempted by federal law, the remaining provisions of this Chapter shall not be affected and shall continue to apply to any other person or circumstance."

"Article 2.

"Commission and Commissioner.

"**§ 53C-2-1. The Commission.**

(a) The Commission consists of 15 members, including the State Treasurer, who shall serve as an ex officio member; 12 members appointed by the Governor; and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint three practical bankers, one consumer finance licensee, and eight public members to the Commission. The member appointed upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker, and the member appointed upon the recommendation of the Speaker of the House shall be a practical banker. Members shall serve terms of four years. No individual shall serve more than two complete consecutive terms on the Commission. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the revenues of the OCOB.

(b) The Commission shall meet at such times, but not less than once every three months, as the Commission may by resolution prescribe, and the Commission shall be convened in special session at the call of the Governor or the Commissioner. The State Treasurer shall be chair of the Commission. The Commission shall meet in person, provided that it may, so long as consistent with applicable law regarding public meetings, meet by telephone or video conference, including attendance of one or more members by telephone or video conferencing.

(c) Except as required by State or federal law, no member of the Commission shall divulge or make use of any information designated by this Chapter or by the Commissioner as confidential, and no member shall give out any such information unless the information shall be required of the member at a hearing at which the member is duly subpoenaed or by a court of competent jurisdiction.

(d) A quorum of the Commission shall consist of a majority of its total membership. Subject to the standards of Chapter 138A of the General Statutes, a majority vote of the members qualified with respect to a matter who are present at the meeting where such matter is considered shall constitute valid action of the Commission. In accordance with G.S. 138A-38, the State Treasurer and all disqualified members who are present at a meeting shall be counted for purposes of determining whether a quorum is present.

(e) The Commission is authorized to supervise, direct, and review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the banking laws of this State.

"**§ 53C-2-2. The Commissioner.**

(a) Effective April 1, 2011, and quadrennially thereafter, the Governor shall appoint a Commissioner, which appointment shall be subject to confirmation by the General Assembly by joint resolution. The name of the individual appointed to be Commissioner shall be submitted to the General Assembly on or before February 1 of the year in which the individual's term of office begins. The term of office for the Commissioner shall be four years. In case of a vacancy in the office of Commissioner, the Governor shall appoint an individual to serve as Commissioner on an interim basis pending confirmation of a nominee by the General Assembly.

(b) The Commissioner has the powers enumerated in this Chapter and otherwise provided by North Carolina law and such other powers as may be necessary for the proper discharge of the Commissioner's duties, including the power to enter into contracts. The Commissioner shall act as the executive officer of the Commission.

(c) The Commissioner is authorized to subpoena witnesses and compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to any power vested or duty imposed on the Commissioner under this Chapter.

(d) The Commissioner may sue and prosecute or defend in any action or proceeding in any courts of this State or any other state and in any court of the United States for the enforcement or protection of any right or pursuit of any remedy necessary or proper in connection with the subjects committed to the Commissioner for administration or in connection with any bank or the rights, liabilities, property, or assets thereof under the Commissioner's supervision. Nothing herein shall be construed to render the Commissioner liable to be sued except as other departments and agencies of the State may be liable under the general law. The Commissioner may exercise any jurisdiction, supervise, regulate, examine, or enforce any State consumer protection laws or federal laws with respect to which the Commissioner has enforcement jurisdiction.

(e) The Commissioner shall have a seal of office bearing the legend "State of North Carolina – Commissioner of Banks." The Commissioner may adopt other symbols or marks of office.

"**§ 53C-2-3. The Office of the Commissioner of Banks.**

(a) The Commissioner shall be assisted in the performance of the duties of office by (i) one or more deputy commissioners and (ii) examiners, investigators, counsel, and other employees under the supervision of the Commissioner, all of whom, together with the Commissioner, shall comprise the "Office of the Commissioner of Banks." In addition, the work of the OCOB may be conducted by employees of other agencies of government and by agents and independent contractors of the OCOB. The Commissioner may appoint or remove at his or her discretion any deputy commissioner.

(b) The Commissioner shall appoint, with the approval of the Governor, and may remove at the Commissioner's discretion, a chief deputy commissioner. The chief deputy commissioner may perform such duties and exercise such powers of the Commissioner as the Commissioner may direct. In the event of the absence, death, resignation, disability, or disqualification of the Commissioner, or in case the office of Commissioner otherwise becomes vacant, the chief deputy commissioner shall perform the duties and exercise all the powers vested in the Commissioner until the Governor appoints an acting Commissioner.

(c) Except as otherwise provided in this Chapter, the OCOB and its employees are exempt from the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1. The salary of the Commissioner shall be fixed by the General Assembly.

(d) The Attorney General shall assign an attorney from the Department of Justice to work full time with the Commission. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The Commission shall fully reimburse the Department of Justice for the compensation, secretarial support, equipment, supplies, records, and other property to support the attorney.

"**§ 53C-2-4. Administration of the Office of the Commissioner of Banks.**

(a) As authorized in Chapters 54B, 54C, and this Chapter, the OCOB shall be funded by annual or periodic assessments, licensing fees and charges, and reimbursements for examination costs. This list is not exclusive. The OCOB may not levy assessments, fees, or other charges except as expressly provided in this Chapter or by rule adopted in accordance with the provisions of Chapter 150B of the General Statutes and the provisions of this section. The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time, place, and method for the payment of assessments, fees, charges, and costs.

(b) Not less than 30 days prior to the commencement of each fiscal year, the OCOB shall prepare and submit to the Commission a budget for the upcoming fiscal year, including the estimated revenues and expenses for the year. The Commission shall review the budget in a meeting prior to the commencement of the fiscal year with respect to which the budget has been presented and shall approve or modify the budget at the meeting.

"**§ 53C-2-5. Rule making.**

(a) The Commissioner, subject to review and approval by the Commission, may make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner under this Chapter.

(b) The rule-making authority conferred on the Commissioner by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter or otherwise provided by North Carolina law.

"**§ 53C-2-6. Hearings and appeals.**

(a) Any administrative hearing required or permitted to be held by the Commissioner shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Upon an appeal to the Commission by any party from an order entered by the Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chair of the Commission may appoint an appellate review panel of not fewer than three members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Commission may, within 20 days after final order of the Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law that may be involved. The petition for judicial review shall be entitled "(insert name) Petitioner v. State of North Carolina on Relation of the Commission." A copy of the petition for judicial review shall be served upon the Commissioner pursuant to G.S. 150B-46. The petition shall be placed on the civil issue docket of the court and shall have precedence over other civil actions. Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake County. The

standard of review of a petition for judicial review of a final order of the Commission shall be as provided in G.S. 150B-51(b).

(c) The hearing officer at administrative hearings conducted under the authority of the Commissioner may be the Commissioner, a deputy commissioner, or other suitable person designated by the Commissioner to serve as a hearing officer.

(d) The Commission may conduct public hearings on matters within its purview.

"**§ 53C-2-7. Official record.**

(a) The Commissioner shall keep a record in the OCOB of the Commissioner's official acts, rulings, and transactions that, except as otherwise provided, shall be open to inspection and copying by any person. The Commissioner may condition the provision of copies of records upon the payment by the person requesting the documents of an amount sufficient to cover the cost of retrieving, copying, and if requested, mailing the documents.

(b) Notwithstanding any laws to the contrary, the following records of the Commissioner shall be confidential and shall not be disclosed or be subject to discovery or public inspection:

(1) Records compiled during or in connection with an examination, audit, or investigation of any person, including records relating to any application for licensure or otherwise to the conduct of business.

(2) Records containing information compiled in preparation for or anticipation of or in the course of litigation, examination, audit, or investigation.

(3) Records containing nonpublic personal information about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the financial institution; provided, however, that every report made by a North Carolina financial institution, with respect to a transaction between it and an officer, director, or affiliate thereof, which report is required to be filed with the Commissioner pursuant to this Chapter, shall be filed with the Commissioner in a form prescribed by the Commissioner and shall be open to inspection and copying by any person.

(4) Records containing information furnished in connection with an application bearing on the character, competency, or experience, or information about the personal finances of an existing or proposed organizer, officer, or director of a depository institution, federally chartered institution, trust institution, holding company, or any other person subject to the Commissioner's jurisdiction.

(5) Records containing information about the character, competency, experience, or finances of the directors, officers, or other persons having control over a person giving notice or filing an application to engage in a control transaction pursuant to this Chapter.

(6) Records containing information about the character, competency, or experience of the directors, executive officers, or other persons having control over any of the parties to a combination subject to the Commissioner's jurisdiction.

(7) Records of North Carolina financial institutions in dissolution that have liquidated, that are under the Commissioner's supervisory control, or that are in receivership and that contain the names or other personal information of any customers of the institutions.

(8) Records prepared by a compliance review committee or other committee of the board of directors of a North Carolina financial institution or established at the direction of such a board of directors that have been obtained by the Commissioner.

(9) Records prepared during or as a result of an examination or investigation of any person by an agency of the United States, or jointly by the agency and the Commissioner, if the records would be confidential under federal law or regulation.

(10) Records prepared during or as a result of an examination or investigation of any person by a regulatory agency with jurisdiction of a state other than this State or of a foreign country if the records would be confidential under that jurisdiction's law or regulations.

(11) Records of information and reports submitted to federal regulatory agencies by any depository institution or trust institution, or its affiliates, holding company or its subsidiaries, or any other person subject to the Commissioner's jurisdiction, if the records would be confidential under federal law or regulation.

(12) Records of complaints from the public received by the OCOB.

(13) Any record that would disclose any information set forth in any of the confidential records referred to in this subsection.

(c) For purposes of this section, "any person subject to the Commissioner's jurisdiction" includes any person who is licensed or registered or should be licensed or registered under this Chapter.

(d) Notwithstanding the provisions of subsection (b) of this section, the Commissioner may, by written agreement with any state or federal law enforcement or regulatory agency, share with that agency any confidential record set out in subsection (b) of this section or any information contained therein, on the condition that such record or information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency.

(e) Nothing in this section shall prohibit a bank, upon approval of the Commissioner, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by this Chapter, the bank's regulatory rating prepared by the OCOB; provided, however, that the insurance carrier must agree in writing to maintain the confidentiality of the information and not to disclose it in any manner whatsoever.

"Article 3.

"Organization of a Bank.

"**§ 53C-3-1. Application to organize a bank.**

(a) An applicant for permission to organize a bank and for a charter must file an application with the Commissioner. The application shall be in the form required by the Commissioner and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a nonrefundable application fee as provided by rule at the time of filing the application.

(b) Upon receipt of an application, the Commissioner shall conduct an examination of the applicant and any other matters deemed relevant by the Commissioner. The Commissioner may require additional information and may require the amendment of the application in the course of the examination. An applicant's failure to furnish all required information or to pay the required fee within 30 days after filing the application may be considered an abandonment of the application.

"**§ 53C-3-2. Permission to organize a bank.**

(a) With the approval of the Commissioner, the organizers may file articles of incorporation for the proposed bank with the Secretary of State. The Commissioner shall authorize the organization of the proposed bank if the Commissioner is satisfied that each of the following conditions is met:

(1) The application is complete.

(2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction.

(3) The proposed name of the proposed bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust institution operating in this State.

(b) If the Commissioner approves the organization of the proposed bank, the Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the Commissioner a certified copy of the filed articles of incorporation of the proposed bank.

(c) Unless and until the Commissioner issues a charter to the proposed bank:

(1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization or the application for a charter or preparation for commencing the business of banking.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under a written escrow with a third-party escrow agent satisfactory to the Commissioner.

(3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval except to the extent that such funds are refunded to subscribers or as otherwise required by law.

(d) A proposed bank is subject to the jurisdiction of the Commissioner.

"**§ 53C-3-3. Articles of incorporation of a proposed bank.**

(a) The articles of incorporation of a proposed bank shall be signed and acknowledged by or on behalf of an organizer and shall contain the following:

(1) The information required to be set forth in articles of incorporation under Chapter 55 of the General Statutes.

(2) Any provision consistent with Chapter 55 of the General Statutes and other applicable law that the organizers elect to set forth for the regulation of the internal affairs of the proposed bank and that the Commissioner authorizes or requires.

(3) Any provision the Commissioner requires or authorizes as a substitute for a provision that otherwise would be required by Chapter 55 of the General Statutes.

(b) Before the chartering of a proposed bank, the articles of incorporation filed under the provisions of G.S. 53C-3-2 shall be sufficient certification to the FDIC that the proposed bank is a legal entity.

"**§ 53C-3-4. Commissioner's approval of charter issuance.**

(a) The Commissioner may approve a charter for a proposed bank only when the Commissioner has determined that all the following requirements have been satisfied or are reasonably probable to be satisfied within a reasonable period of time specified by the Commissioner in the order of approval:

(1) The proposed bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the Commissioner for the commencement of the business of banking.

(2) All prior public solicitations for purchases of shares and all future solicitations will be solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has

not been approved by the Commissioner or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares in a bank in organization are made in United States currency.

(4) The proposed bank has an operational expense fund from which to pay organizational expenses, in an amount determined by the Commissioner to be sufficient for the safe and sound operation of the proposed bank while the charter application is pending.

(5) The proposed bank has been formed for legitimate and lawful business purposes.

(6) The character, competence, and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ten percent (10%) of the voting securities of the proposed bank will command the confidence of the public.

(7) The proposed officers and directors, as a group, have degrees of character, competence, and experience sufficient to justify a belief that the proposed bank will be free from improper or unlawful influence and otherwise will operate safely, soundly, and in compliance with law.

(8) The anticipated volume and nature of business of the proposed bank projected in the application are reasonable and indicate a reasonable probability of safe, sound, and profitable operation of the proposed bank.

(9) If the proposed bank intends to conduct "trust business," as defined by G.S. 53C-1-4(70), it appears that trust powers should be granted based on consideration of the various factors set forth in Article 24 of Chapter 53 of the General Statutes for considering applications and setting capital for a State trust company.

(b) The Commissioner's determination that the requirements described in subsection (a) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements.

(c) If it appears to the Commissioner that the proposed bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner shall issue an order approving the application for a charter and such order shall be submitted to the Commission for its review at a public hearing. The Commissioner may, in the order approving the proposed bank's charter, impose other reasonable conditions or restrictions upon the proposed bank or the new bank, consistent with this Chapter.

(d) If it appears to the Commissioner that the proposed bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner shall issue an order denying approval of the application. The applicant may, within 10 days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53C-2-6.

"**§ 53C-3-5. Notice; public hearing.**

(a) Not less than 30 days before the public hearing of the Commission to review the Commissioner's approval of an application, the applicant shall cause to be published a public notice containing the following:

(1) A statement that the application has been filed with the Commissioner.

(2) The name of the community where the proposed bank intends to locate its principal office.

(3) A statement that a public hearing will be held to review the Commissioner's approval of the application.

(4) A statement that any interested person may file a written statement either favoring or protesting the chartering of the proposed bank. The statement shall note that, in order to be considered at the public hearing, all written statements from interested persons must be filed with the Commission within 30 days of the date of publication of the public notice.

(b) At the public hearing, the Commission shall consider the findings and order of the Commissioner and shall hear such testimony as the Commissioner may wish to give or be called upon to give. To the extent that the Commission deems the information and testimony relevant to its review of the Commissioner's order, the Commission shall receive information and hear testimony from the organizers and shall hear from any other interested persons.

"**§ 53C-3-6. Commission decision.**

(a) The Commission shall consider the findings and order of the Commissioner, oral testimony, and any other information and evidence, either written or oral, that comes before it at the public hearing to review the Commissioner's approval of an application for a charter. The Commission may adjourn and reconvene the public hearing in unusual circumstances. The Commission shall affirm or reverse the Commissioner's order. The Commission may adopt the Commissioner's recommendation with respect to conditions for issuance of a charter, or it may modify the conditions recommended by the Commissioner. The Commission shall render its decision at the public hearing, unless unusual circumstances require postponement of the decision. The Commission's review shall be limited to a determination of whether the criteria set forth in G.S. 53C-3-4 have been met and whether the provisions of this Article have been followed.

(b) If the Commission denies an application for a charter or if the Commission approves an application with conditions not set forth in the Commissioner's approval, the applicant may appeal the denial or approval containing such conditions, as provided in G.S. 53C-2-6.

"**§ 53C-3-7. Issuance of charter.**

(a) A proposed bank shall not engage in business except as allowed under G.S. 53C-3-2(c)(1), until it receives a charter issued by the Commissioner. The Commissioner shall not issue the charter until the Commissioner is satisfied that the proposed bank has done each of the following:

(1) Received payment in United States currency for the purchase of shares and will have satisfactory required capital upon commencing business, in each case in at least the amount required by the Commission's order approving the application.

(2) Elected the proposed officers and directors named in the application or other officers and directors approved by the Commissioner.

(3) Secured deposit insurance from the FDIC.

(4) Complied with all requirements of the Commission's order approving the application for a charter.

(5) Appears to be ready to commence the business of banking in the reasonable discretion of the Commissioner upon a pre-opening examination.

(b) The charter issued by the Commissioner shall set forth any trust powers of the bank that may be full or partial trust powers.

(c) If a bank does not open and engage in the business of banking within six months after the date its charter is issued or within such longer period as may be permitted by the Commissioner, the Commissioner shall revoke the charter.

(d) If the Commissioner determines that a charter should not be issued following Commission approval, the applicant may appeal that decision to the Commission as provided in G.S. 53C-2-6.

(e) Following the exhaustion of all appeals, the Commissioner may dissolve and liquidate the proposed bank as provided in G.S. 53C-9-301, or order the organizers to dissolve

and liquidate the proposed bank pursuant to G.S. 53C-9-201, if any one of the following occurs:

(1) The Commissioner does not recommend the issuance of a charter.

(2) The Commission denies approval of a charter.

(3) The charter is revoked by the Commissioner pursuant to subsection (c) of this section or other applicable law.

"Article 4.

"Governance of Banks.

"**§ 53C-4-1. Banks – form of organization.**

(a) A bank shall be formed as, and shall maintain the form of, a corporation formed under the laws of this State.

(b) The provisions contained in Chapter 55 of the General Statutes shall apply to banks, except where provisions of this Chapter provide differently or where the Commissioner determines that any provision of Chapter 55 is inconsistent with the business of banking or the safety and soundness of banks.

"**§ 53C-4-2. Banks controlled by boards of directors.**

(a) The corporate powers of a bank shall be exercised by or under the authority of, and the business and affairs of the bank shall be managed by or under the direction of, its board of directors.

(b) A bank's board of directors shall consist of not fewer than five individuals. For good cause shown, the Commissioner may approve boards of directors consisting of fewer than five individuals to the extent consistent with other applicable law.

(c) The board of directors shall meet at least quarterly, provided that the executive committee shall meet in any month in which there is no meeting of the board of directors, and the loan committee shall meet monthly.

(d) Except to the extent the provisions of this Chapter or other applicable federal or state laws and regulations impose a different standard, bank directors shall have the duties, authority, and liabilities of directors of corporations organized under Chapter 55 of the General Statutes.

(e) The board of directors of a bank may appoint directors with respect to such of the bank's branches as it deems useful to the business of the bank. No such advisory director shall be liable for acts or omissions undertaken as an advisory director under the laws applicable to the performance of the duties of a director of a bank, unless and only to the extent he or she undertakes or is delegated authority as a director of the bank.

"**§ 53C-4-3. Committees of boards of directors.**

(a) The board of directors shall appoint, at a minimum, an audit committee, an executive committee, and a loan committee (which may be the executive committee or the board of directors as a whole) and may appoint such other committees as it deems appropriate to provide for the safe and sound operation of the bank in a manner consistent with applicable laws and regulations.

(b) The Commissioner may require the board of directors of a bank to establish one or more additional committees if, in the judgment of the Commissioner, such committees are reasonably necessary or appropriate for good corporate governance, for the safe and sound operation of the bank, or to ensure the bank's compliance with applicable laws and regulations. In the exercise of his or her judgment under this subsection, the Commissioner may consider, among other factors, the asset size of the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures, and internal controls.

"**§ 53C-4-4. Minutes of meetings of directors and committees.**

Minutes shall be recorded and retained for all meetings of the board of directors and board committees and kept on file at the bank. The minutes shall show a record of actions taken.

"**§ 53C-4-5. Qualifications of bank directors.**

(a) At least three-fourths of the directors of a bank shall be citizens of the United States of America.

(b) A director must satisfy eligibility requirements for bank directors imposed by federal law, including Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a).

(c) A director must do either of the following:

(1) Appoint an agent in Wake County, North Carolina, for service of process.

(2) Consent, on a form satisfactory to the Commissioner, to the following:

a. The Commissioner may serve as the director's agent for service of process.

b. The director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner.

"**§ 53C-4-6. Liability of directors.**

(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation. Any aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought.

"**§ 53C-4-7. Directors may declare distributions.**

Provided a bank does not make distributions that reduce its capital below its applicable required capital, the board of directors of a bank may declare such distributions as it deems proper.

"**§ 53C-4-8. Officers and employees shall give bond.**

(a) A bank shall require security in the form of a bond for the fidelity and faithful performance of duties by its officers and employees. The bond shall be issued by a bonding company authorized to do business in this State and upon such form as may be approved by the Commissioner. Otherwise, the amount, form, and terms of the bond shall be such as the board of directors may require. The premium for the bond is to be paid by the bank.

(b) To provide for the safety and soundness of a bank, the Commissioner may require an increase in the amount of the bond or additional or different security.

"**§ 53C-4-9. Affiliate transactions.**

A bank may extend credit to, and engage in transactions with, its affiliates, directors, executive officers, principal shareholders, and their respective immediate family members only to the extent permitted by, and subject to such restrictions and conditions as are imposed by, applicable State and federal laws and regulations.

"**§ 53C-4-10. Examination of board composition, structure, and conduct.**

(a) As part of its examinations of a bank, the OCOB may assess the competence, composition, structure, and conduct of such bank's board of directors, including the following:

(1) The number of directors.

(2) The independence of directors.

(3) The committee structure of the board.

(4) The education and training of board members.

(5) Compliance with the bank's code of ethics.

(b) In making the assessment authorized by subsection (a) of this section, the OCOB shall take into consideration publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor and may consider, among other factors, the asset size of

the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures, and internal controls.

"**§ 53C-4-11. Reserve fund.**

(a) Each bank shall maintain a reserve fund as follows:

(1) If the bank is a member of the Federal Reserve System, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board.

(2) All other banks shall maintain a reserve fund as required by the Commissioner.

(b) The Commissioner may require a level of reserve fund for nonmember banks as provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the Commissioner deems necessary for the safe and sound operation of the banks.

(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves:

(1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar intermediary.

(2) Balances on demand from designated depository institutions.

(3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service.

(d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require the bank to do the following:

(1) Discontinue making any new extension of credit.

(2) Promptly restore its reserve fund to the applicable required level.

(e) In the event a bank shall fail to promptly restore its reserve fund to the applicable level required within 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter as the Commissioner deems necessary.

"**§ 53C-4-12. Compliance review committee.**

(a) For purposes of this section, the following definitions apply:

(1) "Compliance review committee" means an audit, loan review, or compliance committee appointed by the board of directors of a bank, or any other person to the extent the person acts at the direction of or reports to such a committee, whose functions are to audit, evaluate, report, or determine compliance with any of the following:

a. Loan underwriting standards.

b. Asset quality.

c. Financial reporting to federal or State regulatory agencies.

d. Adherence to the bank's investment, lending, accounting, ethical, or risk assessment, and financial standards.

e. Compliance with federal or State statutory requirements.

(2) "Compliance review documents" means documents prepared for or created by a compliance review committee.

(3) "Loan review committee" means a person or group of persons who, on behalf of a bank, reviews assets, including loans held by the bank, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the bank's investment and loan policies, and compliance with applicable law and regulations.

(4) "Government agency" means a state or federal regulatory body that is not a bank supervisory agency that has jurisdiction over a bank's compliance with state or federal laws or regulations, including those dealing with taxes, securities, or financial reporting.

(b) Banks shall maintain complete records of compliance review documents, and the documents shall be available for examination by the Commissioner or any bank supervisory agency or government agency having jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of a bank, the Commissioner, a government agency, or a bank supervisory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence.

"Article 5.

"Powers of Banks.

"**§ 53C-5-1. Powers.**

(a) Except as otherwise specifically provided by this Chapter, a bank shall have the powers conferred upon business corporations organized under the laws of this State. In addition, and not by way of limitation, a bank shall have the power to do the following:

(1) Carry on the business of banking, which includes such activities as discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; issuing, advising, and confirming letters of credit; receiving money for transmission; and loaning money on personal security or on real or personal property.

(2) Make any loan that could be made by a federally chartered institution doing business in this State.

(3) Purchase or invest in loans, or a participating interest in loans, of a type that the bank could itself make.

(4) Sell any loan, including one or more participating interests in a loan.

(5) Make any investments authorized by G.S. 53C-5-2 or any other section of this Chapter.

(6) Through information technology systems, processes, and capabilities, provide, deliver, or otherwise make available banking services and products, enhance the effectiveness or efficiency of its operations, and provide other benefits to its customers. Additionally, a bank may utilize its information technology systems, processes, capabilities, and capacities in the same manner and to the same extent as is permitted for national banks.

(7) Engage in any other activities approved by rule, order, or interpretation of the Commissioner.

(b) A bank shall also have the power to engage:

(1) As principal in any activity permissible for a national bank under any law, including the National Bank Act, 12 U.S.C. § 24, as well as any activity recognized as permissible for a national bank in any regulation, order, or written interpretation issued by the OCC.

(2) As principal in any activity that is permissible or determined by the FDIC to be permissible for a bank under the Federal Deposit Insurance Act, 12 U.S.C. § 1831a, or in any regulation, order, or written interpretation thereunder.

(3) As principal in any activity that is permissible for a savings institution organized under Chapters 54B or 54C of the General Statutes, or that is permissible for a federal savings association under the Home Owners' Loan

Act of 1933, 12 U.S.C. § 1464, or in any regulation, order, or written interpretation thereunder.

(4) In any activity other than as principal permitted under the Federal Deposit Insurance Act, 12 U.S.C. § 1831a.

(c) In addition to the other powers described in this section, a bank shall have the power to exercise all other powers that are reasonably necessary or incident to the exercise of the powers authorized in subsections (a) and (b) of this section.

(d) Except as provided in subsection (e) of this section, a bank that proposes to engage in any new activity shall apply to the Commissioner for approval to engage in the activity before its commencement. If the new activity will be conducted in a new or existing subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner for approval to engage in the activity before entering into the investment. The bank shall not engage in the activity or make the investment unless and until the Commissioner issues a written approval of the application. An application for approval shall contain a description of the proposed activity and any other information required by the Commissioner. A copy of any notice or application the bank is required to file with any bank supervisory agency with respect to the proposed activity shall also be provided to the Commissioner. For the purpose of this section, a "new activity" is any business activity in which the bank is not currently engaged. The extension or relocation of an existing activity into a new department, division, or subsidiary of the bank shall not be considered a new activity.

(e) No application for approval to engage in a new activity shall be required, provided all of the following conditions are met as of the date the activity is commenced:

(1) The new activity is one described in subsection (a), (b), or (c) of this section.

(2) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent safety and soundness examination.

(3) No notice or application to engage in the new activity is required to be filed by the bank with any federal banking regulator.

(f) A bank permitted to commence a new activity without prior application and approval pursuant to subsection (e) of this section shall notify the Commissioner in writing of the commencement of the new activity no later than the 30th day after the earlier of (i) commencing the new activity or (ii) if applicable, making an investment in a subsidiary through which the new activity will be conducted.

"**§ 53C-5-2. Investment authority.**

(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the following:

(1) The shares or other securities of the following:

a. Any other depository institution.

b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent (10%) of the required capital of the bank making the investment.

c. Any company in which a federally chartered institution is authorized to invest under any statute or any regulation, official circular, bulletin, order, or written interpretation issued by the OCC.

(2) Bonds or notes issued by or fully and unconditionally guaranteed as to principal and interest by the United States Treasury. No bank shall be

required to maintain a reserve against deposits secured by United States Treasury bonds or notes equal in market value to the amount of such deposits, and such bonds or notes shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit system institution.

(4) Securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932, as amended.

(5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate that have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, or in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States government. No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or prescribing the rates or time of payment of the interest any obligation may bear, or prescribing the period for which loans or investments may be made, shall apply to investments made pursuant to this subsection.

(6) Mutual funds, but subject to rules or orders adopted by the Commissioner.

(b) A bank may make an investment in a subsidiary that will be operated as any of the following:

(1) Bank operating subsidiary.

(2) Financial subsidiary.

(3) DPC subsidiary, as defined by G.S. 53C-1-4(30).

(c) An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section shall receive the same accounting and regulatory treatment as is accorded to such investment by the bank's primary federal supervisor. No investment shall be made by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:

(1) The investment is approved by the board of directors of the bank.

(2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage.

(3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner.

(4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter.

(d) A bank operating subsidiary may make an investment of any size in a lower tier subsidiary.

(e) Except as provided in subsection (f) of this section, a bank or bank operating subsidiary proposing to make an investment described in subsection (b), (c), or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or bank operating subsidiary that the Commissioner objects to the proposed investment, the bank or bank operating subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or bank operating subsidiary may not proceed with respect to the proposed investment.

(f) The prior notice requirement provided by subsection (e) of this section shall not apply if all of the following apply:

(1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.

(2) Each activity of the subsidiary in which the investment is to be made is either of the following:

a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.

b. One for which no prior notice or application for approval to any federal bank supervisory authority is required.

(3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter.

(g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity.

(h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of its required capital.

"**§ 53C-5-3. Banks, fiduciaries authorized to invest in securities approved by the Secretary of Housing and Urban Development, Federal Housing Administration, Veterans Administration.**

(a) Insured Mortgages and Obligation of National Mortgage Associations and Federal Home Loan Banks. – It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees, or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or moneys in their custody or possession that are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate which have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, and in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States Government, or bonds, debentures, consolidated bonds, or other obligations of any federal home loan bank or banks.

(b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage Associations and Federal Home Loan Banks. – All such banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions, and also all such guardians, executors, administrators, trustees, or others acting in a fiduciary capacity in this State, may make such loans, secured by real estate, as the Secretary of Housing and Urban Development, the Federal Housing Administration, a national mortgage association, or the Veterans Administration has insured or guaranteed, or has made a commitment to insure or guarantee, and may obtain such insurance or guarantee; provided, further, that the above designated financial institutions may make loans, secured by real estate, that are eligible and committed for sale to a national mortgage association, federal home loan bank, federal home loan mortgage corporation, or other agency or instrumentality of the United States.

(c) Eligibility for Credit Insurance. – All banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions, on being approved as eligible for credit insurance by the Secretary of Housing and Urban Development, the Federal Housing Administration, or the Veterans Administration, may make such loans as are insured by the Secretary of Housing and Urban Development or Federal Housing Administration or insured or guaranteed by the Veterans Administration.

(d) Certain Securities Made Eligible for Collaterals. – Whenever by statute of this State collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured or guaranteed by the Secretary of Housing and Urban Development, Federal Housing Administration, or Veterans Administration, debentures issued by the Secretary of Housing and Urban Development or the Federal Housing Administration and obligations of a national mortgage association shall be eligible for such purposes.

(e) General Laws Not Applicable. – No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or

prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs.

"Article 6.

"Bank Operations.

"§ 53C-6-1. Loans and extensions of credit.

(a) A bank may make a loan or extension of credit secured by the pledge of its own shares or the shares of its holding company, provided:

(1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of the shares within a period of six months. If the shares have not been disposed of within six months, the shares shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months.

(2) A bank may not extend credit to finance the purchase of or to carry shares of the bank or the shares of its holding company. For purposes of this subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part 221, as promulgated by the Federal Reserve Board.

(b) Loans and Extensions of Credit – Limitations:

(1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of fifteen percent (15%) of the capital of the bank or the percentage permitted for national banks in this State by statute or regulation of the Comptroller of the Currency.

(2) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding, shall not exceed the greater of ten percent (10%) of the capital of the bank or the percentage permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) The following shall not be considered as extensions of credit within the meaning of this section; provided that the limitations of this subsection shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same made by any federal reserve bank or by the United States or any department, board, bureau, commission, or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States.

a. The discount of bills of exchange drawn in good faith against actual existing values.

b. The discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same.

c. Loans or extensions of credit secured by a segregated deposit account in the lending bank.

d. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other depository institutions.

e. The purchase of any notes and the making of any loans secured by not less than a like face amount of bonds of the United States or any agency of the United States; or other obligations guaranteed by the United States government or the State of North Carolina; or certificates of indebtedness of the United States, or agency thereof; or other obligations guaranteed by the United States government.

(4) For purposes of this subsection, the following definitions and conditions apply:

a. "Person" includes an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed; provided, the term "person" shall not include (i) a clearing organization registered with the Commodity Futures Trading Commission (or its successor) or the Securities and Exchange Commission (or its successor) or any federal banking agency or (ii) a bank's affiliates.

b. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise.

c. For purposes of this section, extensions of credit by a bank to a person shall include the bank's credit exposures to the person in derivative transactions with the bank.

d. "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, debt instruments, currencies, interest or other rates, indices, or assets.

e. Credit exposure to a person in connection with a derivative transaction shall be determined based on an amount that the bank reasonably determines, in accordance with customary industry practices under the terms of the derivative transaction or otherwise, would be its loss if the person were to default on the date of determination, taking into account any netting and collateral arrangements and any guarantees or other credit enhancements, provided that the bank may elect to determine credit exposure on the basis of such other method of determining credit exposure as may be permitted by the bank's primary federal regulator.

(c) The Commissioner shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification that could adversely affect the safety and soundness of the banks.

(d) Rules adopted by the Commissioner to ensure that extensions of credit made by banks are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a bank from making any extension of credit that is a permitted extension of credit for a federally chartered institution.

"§ 53C-6-2. Deposits.

(a) A bank may, consistent with applicable law and safe and sound banking practices, offer all types of deposit accounts upon such terms and conditions as the bank considers appropriate.

(b) A bank shall secure insurance for its deposits from the FDIC.

"§ 53C-6-3. Securing deposits.

(a) A bank may not create a lien on its assets or otherwise secure the repayment of a deposit, except as authorized or required by this section, other laws of this State, or federal law.

(b) A bank may pledge its assets to secure a deposit of the government of this State or any other state, any agency or political subdivision of this State or any other state, the United States government, any agency or instrumentality of the United States, or any Indian tribe recognized by the United States government as eligible for the services provided to Indian tribes by the Secretary of the Interior because of its status as an Indian tribe.

(c) This section does not prohibit the pledge of assets by a bank to secure the repayment of money borrowed.

(d) An act, deed, conveyance, pledge, or contract in violation of this section is void.

"§ 53C-6-4. Minors.

(a) A bank may issue and operate a deposit account in the name of a minor or in the name of two or more individuals, one or more of whom are minors, and receive payments, pay withdrawals, accept a pledge of the account, issue automated teller machine (ATM) and debit cards, contract for overdraft protection, and act in any other manner with respect to the account on the order of the minor with like effect as if the minor were of full age and legal capacity. Any payment to or at the direction of a minor is a discharge of the bank to the extent thereof. The account shall be held for the exclusive right and benefit of the minor and any joint owners, free from the control of all other persons except creditors. A minor who obtains a deposit account from a bank under this subsection, whether individually or together with others, is bound by the terms of the deposit account agreement to the same extent as if the minor were of full age and legal capacity.

(b) Any bank may lease a safe deposit box to a minor or to two or more individuals, one or more of whom are minors. With respect to any such lease, a bank may deal with the minor in all regards as if the minor were of full age and legal capacity. A minor entering a lease agreement with a bank under this subsection, whether individually or together with others, is bound by the terms of the safe deposit box agreement to the same extent as if the minor were of full age and legal capacity.

(c) If a minor with a deposit account, other than a joint account with right of survivorship or a Payable on Death account, dies, a parent or legal guardian of the minor may access and withdraw the funds on deposit, and the bank is discharged to the extent of any withdrawal. If a minor with a safe deposit box dies, the provisions of G.S. 28A-15-13 shall control the opening, inventory, and release of contents of the safe deposit box.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

"§ 53C-6-5. Reserved for future codification purposes.

"§ 53C-6-6. Joint accounts.

(a) Any two or more individuals may establish a joint deposit account by written contract. The deposit account shall be held for them as joint tenants. The account also may be held pursuant to G.S. 41-2.1 of the General Statutes and have the incidents set forth in that section. If the account is held pursuant to G.S. 41-2.1, the contract shall set forth that fact.

(b) Unless the individuals establishing a joint account have agreed with the bank that withdrawals require more than one signature, payment by the bank to, or at the direction of, any

joint tenant designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid.

(c) Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated.

(d) A pledge of a joint account by any one or more of the joint tenants, unless otherwise specifically agreed between the bank and all joint tenants in writing, shall be a valid pledge and transfer of the account or of the amount so pledged, shall be binding upon all joint tenants, shall not operate to sever or terminate the joint ownership of all or any part of the account, and shall survive the death of any joint tenant.

(e) A bank is not liable to joint tenants for complying in good faith with a writ of execution, garnishment, attachment, levy, or other legal process that appears to have been issued by a court or other authority of competent jurisdiction and seeks funds held in the name of any one or more of the joint tenants.

(f) Persons establishing a joint account with right of survivorship under this section shall sign a statement showing their election of the right of survivorship in the account and containing language set forth in a conspicuous manner and substantially similar to the following:

"BANK (or name of institution)
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
G.S. 53C-6-6

We understand that by establishing a joint account under the provisions of North Carolina General Statute 53C-6-6 that:

(1) The bank (or name of institution) may pay the money in the account to, or on the order of, any person named as a joint holder of the account unless we have agreed with the bank that withdrawals require more than one signature; and

(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

_____

_____"

(g) This section does not repeal or modify any provision of law relating to estate taxes.

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

(j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to the effective date of this section shall for all purposes be governed by the provisions of this section after the effective date of this section, and any reference to G.S. 53-146.1 in any statement electing a right of survivorship shall be deemed a reference to this section.

(k) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

"**§ 53C-6-7. Payable on Death accounts.**

(a) If any natural person establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person as owner for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the bank.

(2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 53C-6-6.

(3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.

(4) If the beneficiary is a natural person, there may be one or more beneficiaries, and the following shall apply:

a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account and payment by the bank to the owner shall be a total discharge of the bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 53C-6-6, and payment by the bank to the owners or any of the owners shall be a total discharge of the bank's obligation as to the amount paid.

b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest-bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.

(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 53C-6-6, in the case of multiple owners.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner, and the funds shall be subject only to the personal representative's right of

collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The natural person establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below. The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person establishing the account:

"BANK (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 53C-6-7

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 53C-6-7 that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the bank (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death, the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

"

(b) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of the account as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of law relating to estate taxes.

"**§ 53C-6-8. Personal agency accounts.**

(a) Any person may establish a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be any type of deposit account. The written contract shall name an agent who shall have authority to act on behalf of the depositor in the manner set out in this subsection. The agent shall have the authority to do the following:

(1) Make, sign, or execute checks drawn on the account or otherwise make withdrawals from the account.
(2) Endorse checks made payable to the principal for deposit only into the account.
(3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

(b) A person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

"BANK (or name of institution)
PERSONAL AGENCY ACCOUNT
G.S. 53C-6-8

The undersigned understands that by establishing a personal agency account under the provisions of North Carolina General Statute 53C-6-8, the agent named in the account may:

1. Sign checks drawn on the account.

2. Make deposits into the account.

The undersigned also understand that if the undersigned is a natural person, upon his or her death, the money remaining in the account will be controlled by his or her will or inherited by his or her heirs.

"

(c) An account created under the provisions of this section grants no ownership right or interest in the agent. Upon the death of the principal, there is no right of survivorship to the account, and the authority set out in subsection (a) of this section terminates.

(d) The written contract referred to in subsection (a) of this section shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) of this section to act on behalf of the principal in regard to the account, notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal is a natural person and elects to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that the authority has been terminated. The duly qualified guardian of the estate of the incapacitated or incompetent acting pursuant to a durable power of attorney, as defined in G.S. 32A-8, which grants to the attorney-in-fact the authority in regard to the account that is granted to the agent by the written contract executed pursuant to the provisions of this section, shall have the power, upon notifying the agent and providing written notice to the bank where the personal agency account is established, to terminate the agent's authority to act on behalf of the principal with respect to the account. Upon termination of the agent's authority, the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal is a natural person and does not elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) of this section terminates.

(e) When an account under this section has been established, all or part of the account or any interest or dividend may be paid on a check made, signed, or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, the payment shall be valid and sufficient discharge to the bank for payment so made.

(f) A personal agency account shall have only one owner and one agent. The owner shall retain the authority to change the named agent on the personal agency account.

(g) Any personal agency account created under the provisions of G.S. 53-146.3, as it existed prior to the effective date of this section, shall for all purposes be governed by the provisions of this section after the effective date of this section, and any reference to G.S. 53-146.3 in any statement establishing the account shall be deemed a reference to this section.

"**§ 53C-6-9. Accounts opened by adults for minors.**

(a) One or more adults may open and maintain a custodial deposit account for or in the name of a minor and using the minor's taxpayer identification number. Unless otherwise provided in the agreement governing the account the following terms apply:

(1) Beneficial ownership of the account vests exclusively in the minor. All interest credited to the account shall belong to the minor and shall be reported to the appropriate taxing authorities in the name of the minor using the minor's taxpayer identification number.

(2) Except as otherwise provided, control of the account vests exclusively in the custodian whose name appears on the bank's records for the account. If there is more than one custodian named on the bank's account records, each may act independently. Any one or more of the custodians named on the bank's

records may turn over control of the account to the minor at any time, either before or after the minor reaches the age of majority.

(3) If the custodian has not already transferred control, then after the minor beneficiary reaches the age of majority, the beneficiary may instruct the bank to transfer control to the beneficiary and remove the named custodian.

(4) If the custodian or, if more than one custodian is on the account, the last of the custodians to survive dies before the minor reaches the age of majority, the minor's parent or the minor's legal guardian may act as custodian or name another custodian on the account.

(b) This section shall not be deemed exclusive. Accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes, including Chapter 33A, the North Carolina Uniform Transfers to Minors Act, or the common law, as appropriate.

"**§ 53C-6-10. Payment of balance of deceased person or person under disability to personal representative or guardian.**

(a) A bank may pay any balance on deposit to the credit of any deceased individual to the duly qualified personal representative, collector, or public administrator of the decedent who is qualified as such under the laws of any state.

(b) A bank may pay any balance on deposit to the credit of any individual judicially declared incompetent or otherwise under a legal disability to the duly qualified personal representative, guardian, curator, conservator, or committee of the person declared incompetent or under disability who is qualified as such under the laws of any state.

(c) The presentation of a letter of qualification as personal representative, collector, public administrator, guardian, curator, conservator, or committee of the person issued or certified by the appointing court shall be conclusive proof of the jurisdiction of the court issuing the same and sufficient authority for the payment.

(d) Payment by a bank in good faith under the authority of this section discharges the liability of the bank to the extent of the payment.

"**§ 53C-6-11. Powers of attorney; notice of revocation; payment after notice.**

(a) Any bank may continue to recognize any act of an attorney-in-fact or other agent until the bank receives actual notice of the principal's death or a written notice of revocation signed by the principal who granted the authority or, in the case of a company, evidence satisfactory to the bank of the revocation. Payment by the bank to or at the direction of an attorney-in-fact or other agent before receipt of the notice is a total discharge of the bank's obligation as to the amount so paid.

(b) Notwithstanding that a bank has received written notice of revocation of the authority of an attorney-in-fact or other designated agent, a bank may, until 10 days after receipt of notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or agent prior to the revocation, provided that the item is otherwise properly payable.

"**§ 53C-6-12. Account statements to be rendered annually or on request.**

(a) Every bank shall render an account statement for each deposit account at least annually to the depositor; provided, however, the statements are not required for time deposits. Every bank shall render a statement of account for each deposit account, including time deposits upon receipt of an appropriate request reasonably made by a depositor.

(b) For purposes of this section, an account statement is deemed to have been "rendered" to a depositor as of the earlier of the date the statement is mailed to the depositor's address as shown on bank records and the date the account is posted to the bank's Web site in a manner and a form ensuring the statement to be readily available to the depositor; provided however, the bank and the depositor may agree that an account statement may be rendered by other means.

(c) Nothing in this section shall be construed to relieve the depositor from the duty of exercising due diligence in the review of an account statement rendered by the bank and of timely notification to the bank upon discovery of any error.

"**§ 53C-6-13. Safe deposit boxes; unpaid rentals; procedure; escheats.**

(a) If the rental due on a safe deposit box is 90 days or more past due, the lessor bank may send a notice by registered mail or certified mail, return receipt requested, to the last known address of the lessee or by another means agreed to in writing by the lessor bank and the lessee, stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days of the date of the mailing of the notice or the date such notice is given by the means otherwise previously agreed to in writing by the lessor bank and the lessee. If the rental is not paid within the stated period, the box may be opened in the presence of an officer of the bank and of a notary public who is not a director, officer, employee, or shareholder of the bank. The contents shall be sealed in a package by the notary public, who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by registered mail or certified mail, return receipt requested, to the last known address of the lessee or by the means otherwise previously agreed to in writing by the lessor bank and the lessee. The package then shall be placed in the general vaults of the bank at a rental not exceeding the rental previously charged for the box.

(b) If the contents of the safe deposit box have not been claimed within two years of the mailing or other permissible delivery of the copy of the certificate to the lessee, the bank may send a further notice to the last known address of the lessee by registered mail or certified mail, return receipt requested, to the last known address of the lessee or by a means otherwise previously agreed to in writing by the lessor bank and the lessee, stating that unless the accumulated charges are paid within 30 days of the date of the mailing of the notice, the contents of the box will be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B of the General Statutes.

(c) The bank shall submit to the State Treasurer a verified inventory of all of the contents of the safe deposit box upon delivery of the contents of the box or such part thereof as shall be required by the State Treasurer under G.S. 116B-55, but the bank may deduct from any cash of the lessee in the safe deposit box an amount equal to accumulated charges for rental and shall submit to the State Treasurer a verified statement of the charges and deduction. If there is no cash or insufficient cash to pay accumulated charges in the safe deposit box, the bank may submit to the State Treasurer a verified statement of accumulated charges or balance of the accumulated charges due, and the State Treasurer shall remit to the bank the charges or balance due, up to the value of the property in the safe deposit box delivered to the State Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of the property, the State Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe deposit box rental paid by the State Treasurer to the bank shall be deducted from the value of the property of the lessee delivered to the State Treasurer.

(d) Any property, including documents or writings of a private nature, that has little or no apparent financial value need not be sold but may be destroyed by the bank if the State Treasurer declines to receive the property under G.S. 116B-69(a).

(e) An explanation of the contractual provisions pertaining to default, together with reference to this section, shall be printed on every contract for rental of a safe deposit box.

"**§ 53C-6-14. Reproduction and retention of records; admissibility of copies in evidence; disposition of originals; record production generally.**

(a) Any bank may cause any or all records kept by it to be recorded, copied, or reproduced by any photographic, reproduction, electronic, or digital process or method, or by

any other records retention technology approved by rule or order of the Commissioner, of a kind that is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record also shall be deemed a record.

(b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class.

(c) Originals and converted tangible forms of records shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication and shall be received as evidence if otherwise admissible in any court or quasi-judicial proceeding if they have been identified and authenticated by the live testimony of a competent witness or if the records are accompanied by a certificate substantially in the following form:

"CERTIFICATE REGARDING BANK RECORDS

1. The accompanying documents are true and correct copies of the records of [name of bank]. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect.
2. The undersigned is authorized to execute this certificate.
3. This certificate is issued pursuant to G.S. 53C-6-14.

I certify, under penalty of perjury under the laws of the State of North Carolina, that the foregoing statements are true and correct.

Date: _____

_____
Signature

_____
Print or type name

_____
Title

[Notarize as required by law for an affidavit]"

(d) This section supplements and does not supersede G.S. 8-45.1.

"**§ 53C-6-15. Establishment of branches.**

(a) A bank may establish one or more branches in this State, whether de novo or by acquisition of existing branches of another depository institution, with the prior written approval of the Commissioner. The Commissioner's approval may be given or withheld, in the Commissioner's discretion, in accordance with the provisions of subsection (c) of this section.

(b) A bank may establish branches in another state, whether de novo or by acquisition of existing branches of another depository institution, in accordance with the provisions of applicable federal law and the laws of the other state, upon prior written approval of the Commissioner. The Commissioner's approval may be given or withheld in the Commissioner's discretion in accordance with the provisions of subsection (c) of this section.

(c) A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor less than 10 days after the filing of the application with the Commissioner, the applicant shall publish public notice of the filing of the application. The public notice shall contain all of the following:

(1) A statement that the application has been filed with the Commissioner.
(2) The physical address or location of the proposed branch, including street and city or town.

(3) A statement that any interested person may make written comment on the application to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice shall be considered. The public notice shall provide the then current mailing address of the Commissioner.

(d) A bank may conduct any activities at a branch in another state authorized under this section that are permissible for a bank chartered by the other state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this State or by any rule or order of the Commissioner applicable to the bank.

(e) Upon receipt of an application to establish a branch, the Commissioner shall conduct an examination of the pertinent facts and information and may request such additional information as the Commissioner deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account such factors as the financial condition and history of the applicant; the adequacy of its capital; the applicant's future earnings prospects; the character, competency, and experience of its management; the probable impact of the branch on the condition of the applicant bank and existing depository institutions in the community to be served; and the convenience and needs of the community the proposed branch is to serve.

"**§ 53C-6-16. Change of location of a branch or principal office.**

(a) A bank may change the location of its principal office or a branch with the prior written approval of the Commissioner. A request to relocate the principal office or a branch of a bank shall be made in a form acceptable to the Commissioner and shall include information regarding the reason for the proposed relocation, the distance and direction of the move, and such other information as the Commissioner may require in order to reach a decision in the matter.

(b) Not more than 30 days before nor less than 10 days after filing a request to relocate the principal office or a branch of a bank, the applicant shall publish public notice of the request. The public notice shall contain all of the following:

(1) A statement that the request has been filed with the Commissioner.

(2) The physical address of the principal office or branch to be relocated and the physical address of the proposed new location.

(3) A statement that any interested person may make written comment on the request to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice will be considered. The statement shall provide the then current mailing address of the Commissioner.

(c) The Commissioner shall approve a request to relocate the principal office or a branch of a bank if the relocation is to a site within the same vicinity as the original location, or does not result in a material change in the primary service area of the principal office or branch, or is considered important to the economic viability of the bank or the branch, or is otherwise found not to be inconsistent with the public need and convenience.

"**§ 53C-6-17. Branch closings.**

A bank may close a branch upon providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing. The notice shall include the date the branch will close and posting, in a conspicuous manner on the branch premises for a period of 30 days prior to the proposed closing date, a notice of its intent to close the branch. The consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the 90-day and 30-day notice requirements of this section. To be considered a consolidation, the bank shall request consolidation treatment from the Commissioner, who shall decide, in his or her discretion, whether the branches to be

consolidated are considered to be in the same vicinity, with due consideration to the distance between the branches and the nature of the market in which the branches are situated.

"**§ 53C-6-18. Non-branch bank business offices.**

(a) A bank may establish one or more non-branch bank business offices as defined by G.S. 53C-1-4(46).

(1) If a proposed non-branch bank business office will offer a product, service, or other type of business not previously engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office. The notification shall include the proposed location of the office and a description of the business to be conducted at the office. If the Commissioner does not request additional information or object to its establishment within 10 days of the date of receipt of the notification, the non-branch bank business office shall be deemed approved. In deciding whether to object to the establishment of a non-branch bank business office, the Commissioner shall consider, without limitation, whether the business proposed to be conducted at the non-branch bank business office is permissible for a bank, the costs of its establishment and ongoing operation and the impact of the costs on the bank's capital and profitability, and the ability of the bank's management to conduct the proposed business.

(2) If a proposed non-branch bank business office will offer only products, services, or other types of business already engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office.

(b) An out-of-state bank may establish and operate a non-branch bank business office in this State upon written notice to the Commissioner.

(c) A bank or an out-of-state bank may close a non-branch bank business office at any time with notice to the Commissioner.

(d) No deposits may be taken at a non-branch bank business office.

"**§ 53C-6-19. Operations; suspension.**

(a) A bank, any of its branches, and any of its non-branch bank business offices may operate on such days and during such hours, and may observe such holidays, as the bank's board of directors shall designate.

(b) Whenever the Commissioner determines that an emergency exists or is pending in this State or any part thereof, the Commissioner may authorize banks operating in the affected area or areas to suspend any or all of their operations in such area or areas for such period or periods as the Commissioner establishes. An emergency is any condition or occurrence that may interfere with a bank's operations or poses an existing or imminent threat to the safety or security of persons or property, or both.

(c) In the event that an emergency exists or is pending in this State or any part thereof and a bank operating in the affected area or areas is unable to communicate the existence or pendency of the emergency to the OCOB, an officer of the bank may suspend any or all of the bank's operations in the affected area or areas without the prior approval of the Commissioner. The bank shall give notice of such closing to the Commissioner as soon as practicable.

"Article 7.

"Control Transactions; Combinations; Conversions.

"Part 1. Change in Control.

"**§ 53C-7-101. Control transactions.**

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of such control transaction being subject to receipt of the approval of the

Commissioner. Each bank shall report to the Commissioner any changes in its directors, president, chief executive officer, chief financial officer, chief loan officer, or chief credit officer by the close of the second day on which the holding company is open for business following such change.

(b) The Commissioner may require a person who is obligated to file an application under this Part to appoint an agent resident in this State for service of process upon the filing of such notice or as a condition to the acceptance of such application for review. The application for approval shall be in a form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

(c) The following transactions shall not constitute a control transaction requiring the prior approval of the Commissioner:

(1) The acquisition of control over voting securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith and not for the purpose of acquiring control of the bank, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing such transaction at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(2) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the bank after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with the permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.

(3) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(4) Bona fide gifts.

(5) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner issued because approval of such a transaction is not necessary to achieve the objectives of this Chapter.

(6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842).

(d) Upon receipt of a notice described in subsection (c), the Commissioner may, before the 10th day following the receipt, notify the acquiring person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information.

(e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting

securities of the bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows:

(1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities.

(2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner.

(3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information has been determined by the Commissioner to have been satisfied.

"**§ 53C-7-102. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction involving a bank under this Article shall file the following with the Commissioner:

(1) An application in the form prescribed by the Commissioner.

(2) All filing fees required by a rule of the Commissioner.

(3) Such information as is required by a rule of the Commissioner or as is deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a record of the Commissioner and subject to G.S. 53C-2-8.

"**§ 53C-7-103. Public notice.**

A person filing an application for approval of a control application shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

(1) A statement that the application has been filed with the Commissioner.

(2) The name of the applicable bank and the address of its principal office.

(3) A statement that any interested person may make written comment on the proposed control transaction and that comments received by the Commissioner within 14 days of the date of the publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

"**§ 53C-7-104. Actions on control transaction applications.**

(a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the interests of the customers and communities served by the bank would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction, unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control transaction for any of the following reasons:

(1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the bank or the financial interests of its customers.

(2) An examination of the character, competence, and experience of any acquiring person or of any of the proposed management personnel shows

that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit the person to control the bank.

(3) The plans or proposals of the person seeking approval with respect to exercising control over the bank would not be in the best interests of the bank's customers.

(4) Upon the effective date of such proposed control transaction, the bank would not be solvent, have inadequate capital, or not be in compliance with this Chapter or rules of the Commissioner.

(5) The application for approval is incomplete.

(6) If the acquiring person solicits votes for the approval of or consents to the control transaction from the holders of the voting securities of the bank, adequate and complete disclosures of all material information about the proposed control transaction, together with a prominent statement that neither the control transaction nor any solicitation of the holders' votes or consents have been approved by the Commissioner and that any representation to the contrary is a criminal offense, have not been made to the holders.

(c) If an application filed under this Part is approved by the Commissioner, the control transaction may become effective. All conditions to approval set forth in the order of the Commissioner shall be enforceable against the person, and each member of a group of persons, receiving the approval.

"**§ 53C-7-105. Appeal.**

Any order of the Commissioner denying an application for approval of a control transaction may be appealed to the Commission by the person filing the application denied, as provided in G.S. 53C-2-6.

"Part 2. Combinations.

"**§ 53C-7-201. Combination authority.**

With the approval of the Commissioner, a bank may combine with one or more depository institutions or non-depository institutions, provided that the bank is the surviving entity in any combination with a non-depository institution. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule.

"**§ 53C-7-202. Combination application and investigation.**

(a) A bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the bank proposes to effect the combination, and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A bank filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

(1) A statement that the application has been filed with the Commissioner.

(2) The names of the parties to the proposed combination and the addresses of their principal offices.

(3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner within 14 days of the date of the publication of the public notice shall be considered. The public notice shall contain the current mailing address of the Commissioner.

(c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the

surviving party of the combination, to determine whether the interests of the customers of and communities served by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, or experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be subject to G.S. 53C-2-7(b).

"**§ 53C-7-203. Decision on application.**

Based on the application and the Commissioner's examination, the Commissioner shall enter an order approving or denying approval of the proposed combination not later than the 60th day following the date the Commissioner notifies the parties that the application is complete, unless extraordinary circumstances require a longer period of review.

"**§ 53C-7-204. Interim banks.**

The Commissioner may approve an application to organize an interim bank solely for the purpose of effecting a combination under this Article. No interim bank shall transact any business except as is incidental and necessary to its organization and the combination. The Commissioner may set forth in the order approving the organization such additional conditions with respect to the interim bank as the Commissioner deems necessary.

"**§ 53C-7-205. Fiduciary powers and liabilities of North Carolina financial institutions combining or transferring assets and liabilities.**

Whenever any North Carolina financial institution or federally chartered institution doing business in this State shall combine with or shall sell to and transfer its assets and liabilities to any other bank, trust institution, savings institution, or other company, as provided by the laws of this State or the United States, all the then existing fiduciary rights, powers, duties, and liabilities of the combining transferring institution, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be performed by the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution.

"**§ 53C-7-206. Combination with federally chartered institution.**

A combination by a bank with a federally chartered institution in which the federally chartered institution will be the surviving party shall be subject to approval by the chartering authority of the federally chartered institution in accordance with the laws of the United States.

"**§ 53C-7-207. Combination with a subsidiary.**

(a) With the approval of the Commissioner, a bank may do any one the following:

(1) Combine with a subsidiary, so long as a bank is the resulting entity of the combination.

(2) Combine a subsidiary with another company, if a subsidiary is the resulting entity.

(3) Combine two or more subsidiaries of two or more banks under common control of the same holding company.

The approval of the Commissioner is not required for a combination of a subsidiary and another company when a subsidiary is not the resulting entity, which shall be effected in accordance with organizational law applicable to each, or for a combination of two or more subsidiaries of the same bank.

(b) The bank seeking approval of the combination shall file with the Commissioner an application for approval and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter. The bank shall pay to the Commissioner a fee as set forth by rule.

(c) The Commissioner shall examine the proposed combination to determine whether the customers and communities served by the bank would be adversely affected by the combination, the combination would cause the bank to not be solvent, have inadequate capital, or not be in compliance with this Chapter or the rules of the Commissioner, or the combination would present other risks to the safe and sound operation of the bank deemed unacceptable by the Commissioner.

"**§ 53C-7-208. Fiduciary powers and liabilities of combining banks.**

Whenever any bank shall combine with another depository institution and the other depository institution shall be the resulting institution, all the then existing fiduciary rights, powers, duties, and liabilities of the combining bank, including its rights, powers, duties, and liabilities as a fiduciary, shall, upon the effective date of the combination, vest in the resulting depository institution, and the resulting depository institution shall be deemed substituted for the combining bank for all fiduciary purposes.

"**§ 53C-7-209. Appeal.**

Any order of the Commissioner denying an application for approval of a combination may be appealed to the Commission by a party to the combination as provided in G.S. 53C-2-6.

"Part 3. Charter Conversion.

"**§ 53C-7-301. Conversion to a North Carolina bank charter.**

(a) Any depository institution that is not a bank may apply to the Commissioner for permission to convert into a bank and for certification of related amendments to its organizational documents necessary to effect the conversion. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule.

(b) A plan of conversion shall be submitted as a part of the application filed with the Commissioner. The Commissioner may require amendment of the plan.

(c) The Commissioner shall approve the plan of conversion, as amended if applicable, if upon examination the Commissioner finds the following:

(1) The resulting bank will commence operations in a safe, sound, and prudent manner with adequate capital, liquidity, reserves, asset composition, and earnings prospects.

(2) The directors and officers of the converting institution are qualified by character, competency, and experience to control and operate the resulting bank in a legal and proper manner.

(3) The interests of the converting institution's customers, creditors, and shareholders will not be materially and adversely affected by the proposed conversion.

(4) The plan of conversion is not in violation of the converting institution's applicable organizational law.

(5) Adequate written disclosure of the material terms of the plan of conversion and other relevant material information has been or will be made to the converting institution's equity ownership interest holders as required by the converting institution's organizational law, including a statement in any such written disclosure that any materials used to solicit the votes of the holders have not been approved by the Commission or the Commissioner and that any representation to the contrary is a criminal offense.

(d) Following approval of the plan of conversion, the Commissioner shall supervise and monitor the conversion process in order to determine compliance by the converting institution with the plan of conversion and applicable law.

(e) The Commissioner shall authorize by order the consummation of the conversion, issue a charter, and permit the converting institution to file with the Secretary of State and other public officials such documents as are necessary to effect the conversion when the

Commissioner determines the conversion process complied with the organizational law applicable to the converting institution and the plan of conversion was approved, if required by applicable organizational law, by such vote of the converting institution's equity ownership interest holders as is required under the organizational law.

(f) The Commissioner may provide in the order authorizing the consummation of conversion for the resulting bank to do the following:

(1) Wind up any activities legally engaged in by the converting institution at the time of conversion but not permitted to banks.

(2) Return any assets and deposit liabilities legally held by the converting institution at the time of the conversion but not permitted to be held by banks.

The length, terms, and conditions of the transitional periods described in this subsection shall be subject to the discretion of the Commissioner.

(g) Upon the effective date of the conversion, the converting institution shall continue in existence as a bank, and all rights, liabilities, and obligations of whatever kind of the converting institution shall continue and remain in its new form of organization. Except as may be authorized by the Commissioner pursuant to subsection (f) of this section, the bank shall have only those rights, powers, and duties authorized for or imposed upon banks by the laws of this State and the United States. All actions and proceedings to which the converting institution was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected.

"**§ 53C-7-302. Appeal.**

Any order of the Commissioner denying an application for approval of a conversion to a bank may be appealed to the Commission by the party filing the application as provided in G.S. 53C-2-6.

"**§ 53C-7-303. Conversion by North Carolina bank.**

(a) A bank may convert to another form of depository institution under the laws of this State, of another state, or the United States in accordance with applicable law.

(b) Upon the effective date of the conversion, the depository institution shall notify the Commissioner of the effective date and file with the Commissioner a copy of its authorization to operate as a depository institution certified by the applicable federal regulator or financial institution regulator.

(c) Upon the effective date of the conversion, the resulting depository institution shall cease to be a bank.

(d) Upon the effective date of the conversion, all rights, liabilities, and obligations of whatever kind of the bank shall continue and remain in its new form of organization as a depository institution organized under the laws of this State, another state, or the United States. All actions and proceedings to which the bank was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected.

"Article 8.

"Bank Supervision.

"**§ 53C-8-1. Commissioner has authority to supervise banks.**

(a) Every bank shall be under the supervision of the Commissioner. It shall be the Commissioner's duty to enforce the banking laws through the employees and agents of the OCOB. All banks shall conduct their business in a manner consistent with the banking laws.

(b) The Commissioner may enter into written agreements, cease and desist order stipulations, cease and desist orders, consent orders, and similar arrangements with banks and their holding companies, or either of them; may request resolutions be approved by boards of directors of banks and their holding companies, or either of them; and may take other similar corrective actions.

(c) Upon written request, the Commissioner may, notwithstanding any other provision of law to the contrary, issue letters of interpretation, advisory opinions, or written guidance on any laws under the Commissioner's jurisdiction, provided that the interpretations, opinions, and guidance shall not have the force and effect of rules of law.

"**§ 53C-8-2. Assessments and fees.**

Banks shall pay the following assessments and fees into the OCOB within 10 days after receipt of an invoice:

(1) Annual assessments. – Each bank shall pay a cumulative assessment based on its total assets as shown on its report of condition made to the Commissioner as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule:

a. On the first fifty million dollars ($50,000,000) of assets, or fraction thereof, ten thousand dollars ($10,000).

b. On assets greater than fifty million dollars ($50,000,000) but not more than two hundred fifty million dollars ($250,000,000), fourteen dollars ($14.00) per hundred thousand dollars ($100,000), or fraction thereof.

c. On assets greater than two hundred fifty million dollars ($250,000,000), but not more than five hundred million dollars ($500,000,000), eleven dollars ($11.00) per hundred thousand dollars ($100,000), or fraction thereof.

d. On assets greater than five hundred million dollars ($500,000,000), but not more than one billion dollars ($1,000,000,000), seven dollars ($7.00) per hundred thousand dollars ($100,000), or fraction thereof.

e. On assets greater than one billion dollars ($1,000,000,000), but not more than ten billion dollars ($10,000,000,000), four dollars ($4.00) per hundred thousand dollars ($100,000), or fraction thereof.

f. On assets greater than ten billion dollars ($10,000,000,000), two dollars ($2.00) per hundred thousand dollars ($100,000), or fraction thereof.

(2) Assessments on trust assets. – Each bank shall pay an assessment on trust assets held by it in the amount of one dollar ($1.00) per hundred thousand dollars ($100,000) of trust assets, or fraction thereof, except that banks are not required to pay assessments on real estate held as trust assets.

(3) Special assessments. – If the Commissioner determines that the financial condition or manner of operation of a bank warrants further examination or an increased level of supervision, or in the event of a combination or conversion, the Commissioner may charge, and the institutions shall pay, an assessment equal to the reasonable cost of further examination, increased level of supervision, or supervision with regard to the combination or conversion. The Commissioner's determination of the cost of further examination shall be, in the absence of manifest error, dispositive of the issue of reasonableness.

(4) In the first half of each calendar year, the Commission shall review the estimated cost of maintaining each division of the OCOB for the next fiscal year. If the estimated assessments provided for under this Chapter for any division shall exceed the estimated cost of maintaining that division for the next fiscal year, then the Commission may reduce by a uniform percentage any assessments provided for in this Chapter for that division. If the estimated assessments provided for in this Chapter for any division shall be

less than the estimated cost of maintaining that division for the next fiscal year, then the Commission may increase by a uniform percentage any assessments provided for in this Chapter for that division to an amount that will increase the amount of assessments to be collected to an amount at least equal to the estimated cost of maintaining that division of the OCOB for the next fiscal year.

"**§ 53C-8-3. Reports required of banks.**

(a) Each bank shall file the following with the Commissioner, at such times, on such forms, and in such formats as the Commissioner may require:

(1) Annual reports of conditions.

(2) Periodic reports for interim periods within a year, not less than monthly in any case.

(b) In addition to the reports filed pursuant to subsection (a) of this section, each bank shall provide to the Commissioner copies of all applications and reports of condition filed by it under applicable federal law contemporaneously with the filing of such application and reports by the bank with its primary federal regulator.

(c) Nothing in this section shall be interpreted to limit the authority of the Commissioner to request and obtain other information that the Commissioner may deem necessary to discharge the duties of the Commissioner under this Chapter.

"**§ 53C-8-4. Examination by Commissioner.**

(a) The Commissioner may examine everything relating to the business of a bank or its holding company, and may appoint examiners to make such examination. The examiners shall file with the Commissioner a full report of the findings resulting from the examination, including any violation of law or any unauthorized or unsafe practices of the bank or the holding company disclosed by the examination.

(b) Examinations under subsection (a) of this section shall be conducted pursuant to practices and procedures established by the OCOB, provided the Commissioner may take into consideration the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company.

(c) The Commissioner shall furnish a copy of the report of examination to the bank or the holding company examined and may, upon request, furnish a copy of the report to the primary federal regulator of the bank or its holding company and to the FDIC if not the bank's primary federal regulator.

"**§ 53C-8-5. Examination of affiliates.**

The Commissioner, at his or her discretion, may examine the affiliates of a bank to the extent it is necessary to safeguard the interest of depositors and creditors of the bank and of the general public, and to enforce the provisions of this Chapter. The Commissioner may conduct the examination in conjunction with any examination of the bank or an affiliate thereof conducted by any other state or federal regulatory authority.

"**§ 53C-8-6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses.**

(a) The Commissioner and the Commissioner's examiners and agents:

(1) Shall have free access to all books and records of a bank, its holding company, and their affiliates that relate to the business of the bank or the holding company, and the books and records kept by an officer, agent, or employee of the bank or holding company relating to or upon which any record is kept.

(2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of the bank, its holding company, or their affiliates or of any other person in relation to

affairs, transactions, and conditions of the bank, its holding company, or their affiliates.

(3) May require the production of the records, books, papers, contracts, and other documents of a bank, its holding company, and their affiliates.

(4) May order that improper entries be corrected on the books and records of a bank, its holding company, and the bank's affiliates.

(b) The Commissioner may issue subpoenas duces tecum.

(c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Commissioner, may compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

"**§ 53C-8-7. Examiner making false report.**

If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank that the examiner has examined with the intent to aid or abet the bank or its affiliates in committing violations of any provision of this Chapter, or if any examiner shall keep or accept any bribe or gratuity given for the purpose of inducing the examiner not to file any report of examination of any bank, or if any examiner shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, the examiner shall be guilty of a Class H felony.

"**§ 53C-8-8. Examiner disclosing confidential information.**

If any examiner or other employee of the OCOB fails to keep secret the facts and information obtained in the course of an examination of a bank except as permitted or required by this Chapter, the examiner shall be guilty of a Class 1 misdemeanor.

"**§ 53C-8-9. Loans or gratuities forbidden.**

(a) No bank, or any officer, director, employee, or affiliate thereof, shall make an extension of credit or grant any gratuity to the Commissioner, any deputy commissioner, or any bank examiner. Any person violating this provision shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee, or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner.

"**§ 53C-8-10. Willfully and maliciously making derogatory reports.**

Any person who shall willfully and maliciously make, circulate, transmit, or otherwise communicate any statement, rumor, or suggestion to one or more other persons that is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing, of any bank, or who shall counsel, aid, procure, or induce another to make, circulate, transmit, or otherwise communicate any such statement or rumor, shall be guilty of a Class 1 misdemeanor.

"**§ 53C-8-11. Misapplication, embezzlement of funds.**

(a) Any person who, with intent to defraud or injure a bank or any other person or with intent to deceive an officer of the bank or an employee of the OCOB appointed to examine the affairs of the bank, commits any of the following acts shall be guilty of a felony:

(1) Embezzles, converts, or misapplies any of the money, funds, credit, or property of the bank, whether owned by it or held in trust.
(2) Issues or puts forth a certificate of deposit; draws an order or bill of exchange; makes an acceptance; assigns a note, bond, draft, bill of exchange, mortgage, judgment, or decree; or fictitiously borrows or solicits, obtains, or receives money for a bank not in good faith.
(3) Makes or permits to be made a false entry in a record of a bank, or conceals or permits to be concealed, by any means or manner, the true and correct entries in a record of a bank.
(4) Knowingly makes an extension of credit, or permits an extension of credit, by a bank to any insolvent person or to a person who has ceased to exist, or that never had any existence, or upon collateral consisting of stocks or bonds of an insolvent or nonexistent person.
(5) Makes or publishes, or knowingly permits to be made or published, a false report, statement, or certificate as to the true financial condition of a bank.

(b) If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars ($100,000) or more, it is a Class C felony. If an offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars ($100,000), it is a Class H felony.

"**§ 53C-8-12. Enforcement of the banking laws.**

(a) When the Commissioner believes that a violation of the banking laws has occurred or is continuing, the Commissioner may order an examination or investigation of the facts and circumstances relating to the suspected violation.

(b) Every bank failing to make and transmit any report that the Commissioner is authorized to require by this Chapter, and in and according to the form prescribed by the Commissioner, within 10 business days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner, shall be notified by the Commissioner, and if the failure continues for five business days after the receipt of the notice, the delinquent bank shall be subject to a penalty of up to one thousand dollars ($1,000). The penalty provided by this section shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

(c) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to do the following:
(1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist violating any provision of this Chapter or any lawful rule issued thereunder.
(2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist from a course of conduct that is unsafe or unsound and that is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

(d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the actions authorized by this section shall be undertaken by the Commissioner. In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(e) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under

oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

(f) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, of an order issued under subdivision (1) of subsection (c) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, violates a cease and desist order issued under subdivision (2) of subsection (c) of this section. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) Administrative orders issued by the Commissioner and civil money penalties imposed for violation of such orders shall be subject to review by the Commission, which shall have power to amend, modify, or disapprove the same at any regular or special meeting.

(h) Notwithstanding any penalty imposed by the Commissioner, the Commission may, after notice of and opportunity for hearing, impose, enter judgment for, and enforce, by appropriate process, a penalty of not more than ten thousand dollars ($10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees, or any other person the Commissioner is authorized to regulate, for violating any lawful order of the Commission or Commissioner. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If the Commissioner believes that a violation of a criminal statute has occurred, the Commissioner may refer the matter to the appropriate prosecutorial agency.

"**§ 53C-8-13. Immediate action orders.**

(a) In the event that the Commissioner determines that a bank has inadequate capital or insufficient capital or determines that immediate action is necessary to cause a bank to conduct its business in a safe and sound manner or to cause a bank or any of its directors, officers, or employees to cease from an act or course of conduct that threatens, or is reasonably probable of threatening, the financial integrity of the bank, the commissioner may order, as applicable, the bank to take such corrective action as the Commissioner deems necessary or may order the bank, director, officer, or employee to immediately cease such conduct, act, or course of conduct and to refrain therefrom in the future.

(b) Any order made under this section shall be effective upon issuance, provided, however, that the Commissioner shall promptly afford a subsequent hearing upon the order as provided in G.S. 53C-2-6.

"**§ 53C-8-14. Supervisory control.**

(a) Whenever the Commissioner determines that a bank has insufficient capital and is conducting its business in an unsafe or unsound manner or in any fashion that threatens the financial integrity of the bank, the Commissioner may serve a notice of charges on the bank, requiring it to show cause why it should not be placed under supervisory control. The notice of charges shall specify the grounds for supervisory control and set the time and place for a hearing. A hearing before the Commissioner shall be held no earlier than seven days and no later than 15 days after issuance of the notice of charges.

(b) If, after the hearing provided in subsection (a) of this section, the Commissioner determines that supervisory control of the bank is necessary to protect the bank's customers, creditors, or the general public, the Commissioner shall issue an order taking supervisory control of the bank. The board of directors of the bank in office on the date of the issuance of

the order may appeal the order of the Commissioner to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of the issuance of the order.

(c) The Commissioner may appoint an agent to supervise and monitor the operations of the bank during the period of supervisory control. During the period of supervisory control, the bank shall act in accordance with any instructions and directions as may be given by the Commissioner, directly or through the agent, and shall not act or fail to act except when to do so would violate an outstanding order of its federal bank supervisory agent or the FDIC if the FDIC is not its primary federal regulator.

(d) Within 180 days of the date of the order taking supervisory control, the Commissioner shall issue an order approving a plan for the termination of supervisory control on the 30th day following the issuance of the order. The plan may provide for the following:

(1) The issuance by the bank of debt instruments or shares.

(2) The appointment or removal of one or more officers and/or one or more directors.

(3) The reorganization or combination of the bank.

(4) A control transaction with respect to the bank.

(5) The dissolution and liquidation of the bank.

(e) The reasonable costs of the Commissioner under this section shall be paid by the bank. The Commissioner's determination of the costs shall be, in the absence of manifest error, dispositive of the issue of reasonableness.

"**§ 53C-8-15. Removal of directors, officers, and employees.**

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the Commissioner, or has engaged in any unsafe or unsound business practice in the operation of the bank, or has been dishonest, incompetent, or reckless in the management of the affairs of the bank, or has persistently violated the laws of this State, or repeatedly violated or failed to comply with any of the bank's organizational documents, and that as a result, a situation exists requiring prompt corrective action in order to protect the bank, its customers, or the public, the Commissioner may issue an order temporarily removing the director, officer, or employee pending a hearing that shall occur not less 10 days after removal. The order shall state that it is a "Temporary Order of Removal" and shall further state the grounds upon which it was issued together with the date, time, and location of a hearing on the matter. For good cause shown, the Commissioner may grant the director, officer, or employee subject to the order a 10-day extension of the hearing date, but the temporary removal order shall remain in full force and effect. Upon a hearing before the Commissioner within the prescribed time, the temporary removal order may be dissolved or made permanent in whole or in part.

(b) Any removal under this section is effective in all respects as if the removal had been made by the shareholders of the bank in question.

(c) Without the prior written approval of the Commissioner, no director, officer, or employee subject to an order under this section shall be eligible to be elected, reelected, or appointed any position as a director, officer, or employee of that bank or any other North Carolina financial institution during the period of the order's effect.

(d) An individual who is the subject of an order of the Commissioner under this section may appeal the order to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of issuance of the order.

"**§ 53C-8-16. Emergency powers.**

In the event of a natural disaster or other national, regional, state, or local emergency, the Commissioner may temporarily waive or suspend requirements for compliance by one or more banks with any provisions of this Chapter.

"**§ 53C-8-17. Interstate regulatory agreements.**

The Commissioner may enter into cooperative, coordinating, and information sharing agreements with (i) any bank supervisory agency having jurisdiction over an out-of-state bank that operates one or more branches in this State and (ii) any bank supervisory agency of another state in which a bank operates one or more branches with respect to the periodic examination or other supervision of the branches of the out-of-state bank operating in this State or the branches of the bank operating in such other state.

"Article 9.

"Supervisory Liquidation; Voluntary Dissolution and Liquidation.

"Part 1. General Provisions.

"§ 53C-9-101. Supervisory combinations.

Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to resume safe and sound operations, may authorize or require a combination of the bank, a control transaction, or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 53C-8-14. In ordering any such combination, control transaction, or other transaction, the Commissioner may order that a vote of the bank's shareholders shall not be required to effect the combination, control transaction, or other transactions.

"§ 53C-9-102. Distributions; assignments restricted.

A bank that is in the process of involuntary or voluntary dissolution pursuant to this Article may not make or pay distributions to its shareholders unless the bank has the prior written approval of the Commissioner. No bank shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner for dissolution and liquidation pursuant to G.S. 53-9-301, and any other purported assignment by the bank for the benefit of its creditors shall be void.

"§ 53C-9-103. Cancellation of charter.

Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's charter and shall publish the order in accordance with G.S. 53-1-4(59). A copy of the order shall be filed by the Commissioner with the Secretary of State. The bank shall continue to exist under Chapter 55 of the General Statutes for the purpose of dissolving and liquidating its business and affairs.

"Part 2. Voluntary Dissolution and Liquidation.

"§ 53C-9-201. Voluntary dissolution prior to receipt of charter.

A bank in formation may, prior to issuance of its charter, give notice to the Commissioner and, with the Commissioner's consent, abandon its application to the Commissioner and dissolve and liquidate by a majority vote of its board of directors and as provided under Chapter 55 of the General Statutes.

"§ 53C-9-202. Voluntary dissolution.

(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.

(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall submit immediately to the Commissioner the following documents, certified by an appropriate officer of the bank:

(1) The board of directors' resolution.

(2) The bank's proposed articles of dissolution.

(3) The board of directors' plan for liquidation.

(4) Any notices or proxy solicitation materials proposed to be sent to shareholders.

(c) The Commissioner shall examine the documents submitted under subsection (b) of this section and such other matters as the Commissioner deems relevant and may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) of this section shall not be deemed to be approval of the documents for any purpose.

(d) At any annual or special meeting of shareholders called for the purpose of voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c) of this section.

(e) If a majority of the board of directors of a bank should determine that in its best judgment the bank should be dissolved and liquidated but deems it impractical or otherwise inadvisable to proceed with a vote upon voluntary dissolution by the shareholders, then the board of directors shall immediately forward a certified copy of its resolution to the Commissioner and the Commissioner shall place the bank in receivership pursuant to G.S. 53C-9-301.

"**§ 53C-9-203. Voluntary dissolution and liquidation procedure.**

(a) At the appropriate time, the Commissioner shall do the following:

(1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC.

(2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301.

(3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file the certified articles with the Secretary of State.

(b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts or make any additional extensions of credit, but all its income and receipts in excess of actual expenses of liquidation of the bank shall be applied to the discharge of its liabilities.

(c) The persons charged with liquidation of the bank in the approved plan of dissolution shall cause to be published a public notice stating the bank has closed and will dissolve and liquidate and notifying its depositors and creditors to present their claims for payment, specifying the method for doing so.

(d) The bank may pay reasonable compensation, subject to the approval of the Commissioner, to the persons charged with its liquidation.

(e) Any bank in the process of voluntary dissolution and liquidation shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner.

(f) If the Commissioner determines at any time that the voluntary liquidation plan is not working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301.

"Part 3. Receivership; Involuntary Dissolution.

"**§ 53C-9-301. Receivership.**

(a) The Commissioner may take custody of the books, records, and assets of every kind and character of any bank in the instances established in Part 2 of this Article or if it reasonably appears from one or more examinations made by the Commissioner that any of the following conditions exist:

(1) The directors or officers of the bank, or the liquidators of the bank subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action that the Commissioner deems necessary for the protection of the bank.

(2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination.

(3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner.

(4) The bank is in an unsafe or unsound condition to transact business and it is not reasonably probable that it will be able to return to a safe and sound condition.

(5) The capital of the bank is impaired such that the likely realizable value of its assets is insufficient to pay and satisfy the claims of all depositors and all creditors.

(6) The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond.

(7) The bank is insolvent or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds.

(8) The bank is unable to continue operations.

(b) Unless the Commissioner reasonably finds that an emergency exists that requires that the Commissioner take custody immediately, the Commissioner shall first give written notice to the board of directors of the bank specifying which of those circumstances listed in subdivisions (1) through (8) of subsection (a) have been determined to exist and shall allow a reasonable time in which corrections may be made before a receiver of the bank will be appointed as outlined in subsections (c) and (d) of this section. For these purposes, "written notice" shall be deemed to include any report of examination or other confidential or nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner.

(c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require.

(d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank.

(e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59).

(f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c) or (d) of this section:

(1) The receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to all the rights, titles, powers, and privileges of the bank, its shareholders, officers, and directors, or any of them, and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the bank. Neither the shareholders, officers, or directors, nor any of them, shall thereafter, except

as expressly provided in this section, have or exercise any rights, powers, or privileges or act in connection with any assets or property of any nature of the bank in receivership.

(2) The Commissioner may, at any time, direct the receiver (unless it is the FDIC) to return the bank to its previous or a newly constituted management and its shareholders.

(3) A receiver, other than the FDIC, may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner.

(g) A receiver may perform any of the following acts:

(1) Demand, sue for, collect, receive, and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, instruments, notes, intangible interests, and property of every description of the bank.

(2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so.

(3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment.

(4) Sell, convey, and assign any or all of the property rights and interests owned by the bank.

(5) Appoint agents and engage independent contractors.

(6) Examine papers and investigate persons.

(7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith.

(8) Perform all other acts that might be done by the employees, officers, and directors of the bank.

These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management.

(h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act, or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank.

(i) Claims against a bank in receivership shall have the following order of priority for payment:

(1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB.

(2) Claims of holders of deposit accounts.

(3) Claims of secured creditors in such order of priority as is established by applicable law or regulation.

(4) Claims of general creditors.

(5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents.

(j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims.

(k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section and may direct the payment of less than all claims within a class.

(l) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner:

(1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets.

(2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets in any manner as the Commissioner may direct.

(3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes.

(4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the Commissioner shall issue a certification of completed liquidation to the Secretary of State.

(5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release.

"Part 4. Provisions Relating to Any Dissolution or Receivership.

"**§ 53C-9-401. Statute relating to receivers applicable to insolvent banks.**

The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this Article.

"**§ 53C-9-402. Storage and destruction of records.**

(a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53C-6-14.

(b) All records of a bank that has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53C-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures.

(d) Nothing in this section shall be construed to authorize the destruction by the Commissioner of any of the records of the OCOB made by it with reference to the dissolution, receivership, or liquidation of any bank.

"**§ 53C-9-403. Authority to serve as trustee terminated.**

Whenever any bank that has been, or shall be, appointed trustee in any indenture, deed of trust, or other instrument of like character, executed to secure the payment of any bonds, notes, or other evidences of indebtedness, has been or shall be placed in receivership, the powers and duties of the bank as trustee in any such instrument shall, upon the entry of an order of the clerk of superior court having jurisdiction under G.S. 53C-9-405 appointing a successor trustee, upon a petition as described in this Part, immediately cease.

"**§ 53C-9-404. Petition for new trustee; upon parties interested.**

In all cases of dissolution receivership and liquidation under this Article, the clerk of superior court of any county in which an indenture, deed of trust, or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary, or otherwise, which interest shall be set out in the petition, enter an order directing service, in the manner required by law for service of summons, on all interested parties of a notice requiring all persons having any interest in the trust to appear at the clerk's office on a day designated in the order and notice, not less than 30 days from the date of the first publication of the notice, and show cause why a new trustee shall not be appointed. The notice shall set forth the names of the parties to the indenture, deed of trust, or other such instrument, and the date the documents were executed and the place of recording.

"**§ 53C-9-405. Appointment of substitute trustee where no objection made.**

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the clerk of superior court shall, upon such terms as he or she deems advisable to the best interest of all parties, appoint a competent person authorized to act as substitute trustee, who shall be vested with and shall exercise all the powers conferred upon the trustee named in the instrument.

"**§ 53C-9-406. Hearing where objection made; appeal from order.**

If objection is made to the appointment of a new trustee under this Part, the clerk shall hear and determine the matter, and from his or her decision an appeal may be prosecuted as in cases of special proceedings generally.

"**§ 53C-9-407. Registration of final order.**

The final order of appointment of a new trustee or trustees under this Part shall be certified by the clerk of superior court issuing the order and shall be recorded in the office of the register of deeds in the county or counties in which the instrument under which the appointment has been made is recorded.

"**§ 53C-9-408. Petition and order applicable to all instruments involved.**

The petition and the order appointing a new trustee or trustees under this Part may apply to any number of indentures, deeds of trust, or other instruments, wherein the same trustee or trustees are named.

"**§ 53C-9-409. Additional remedy.**

The appointment of a substitute trustee as described in this Part shall be in addition to and not substitution for any other remedy provided by law.

"Article 10.

"Bank Holding Companies.

"Part 1. Change in Control.

"**§ 53C-10-101. Holdings companies.**

Every holding company, as defined in G.S. 53C-1-4(39), of a bank shall register with the Commissioner and maintain that registration on an annual basis in the form prescribed by the Commissioner.

"**§ 53C-10-102. Holding company control transaction.**

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction to which a holding company formed under the laws of this State and having a bank as a subsidiary is a party without the prior approval of the Commissioner. A

person may contract to engage in a control transaction with the consummation of the control transaction being subject to receipt of the approval of the Commissioner.

(b) The Commissioner may require a person who is obligated to file a notice or an application under this section to appoint an agent resident in this State for service of process upon the filing of the notice or application or as a condition to the acceptance of the notice or application for review. An application for approval shall be in a form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

(c) The following transactions shall not constitute a control transaction under this section requiring the prior approval of the Commissioner:

(1) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the holding company after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.

(2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(3) Bona fide gifts.

(4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter.

(5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B) or (C) of that section.

(d) Upon receipt of a notice described in subsection (c) of this section, the Commissioner may, before the 10th day following the receipt, notify the acquiring person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information.

(e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the holding company of a bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows:

(1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities.

(2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner.

(3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied.

"**§ 53C-10-103. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner:

(1) An application in the form prescribed by the Commissioner.

(2) All filing fees required by rule of the Commissioner.

(3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b).

"**§ 53C-10-104. Public notice.**

A person filing an application for approval of a control transaction shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

(1) A statement that the application has been filed with the Commissioner.

(2) The name of the applicable holding company and the address of its principal office.

(3) A statement that any interested person may make written comment on the proposed control transaction and that comments received by the Commissioner within 14 days of the publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

"**§ 53C-10-105. Actions on control transaction applications.**

(a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the financial stability of the holding company or the interests of the customers served by one or more bank subsidiaries of the holding company would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control for any of the following reasons:

(1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company, or the financial interests of the bank's customers.

(2) An examination of the character, competence, or experience of any acquiring person or of any of the proposed management personnel of the holding

company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company.

(3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.

(4) Upon the effective date of the proposed control transaction, one or more of the bank subsidiaries of the holding company would not be solvent, have inadequate capital, or not be in compliance with this Chapter or rules of the Commissioner.

(5) The application for approval is incomplete.

(6) If the acquiring person solicits votes for the approval of or consents to the control transaction from the holders of the voting securities of the holding company, adequate and complete disclosures of all material information about the proposed control transaction, together with a prominent statement that neither the control transaction nor any solicitation of such holders' votes or consents has been approved by the Commissioner and that any representation to the contrary is a criminal offense, have not been made to the holders.

(c) If an application filed under this Part is approved by the Commissioner, the control transaction may become effective. All conditions to approval set forth in the order of the Commissioner shall be enforceable against the person, and each member of a group of persons, receiving the approval.

"**§ 53C-10-106. Appeal.**

Any order of the Commissioner denying an application for approval of a control transaction may be appealed to the Commission by the person filing the application denied, as provided in G.S. 53C-2-6.

"Part 2. Combinations.

"**§ 53C-10-201. Combination authority.**

With the approval of the Commissioner, a holding company of a bank may combine with one or more other holding companies or other companies. The application for approval shall be in the form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

"**§ 53C-10-202. Combination application and investigation.**

(a) A holding company of a bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the holding company proposes to effect the combination, and any additional information that the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

(1) A statement that the application has been filed with the Commissioner.

(2) The names of the parties to the proposed combination and the addresses of its principal offices.

(3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner within 14 days of the publication of the public notice shall be considered.

The public notice shall provide the current mailing address of the Commissioner.

(c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, and experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b).

"**§ 53C-10-203. Decision on application.**

Based on the application and the Commissioner's examination, the Commissioner shall enter an order approving or denying approval of the proposed combination not later than the 60th day following the date the Commissioner notifies the parties that the application is complete, unless extraordinary circumstances require a longer period of review.

"**§ 53C-10-204. Appeal.**

Any order of the Commissioner denying an application for approval of a combination may be appealed to the Commission by a party to the combination, as provided in G.S. 53C-2-6.

"Part 3. General Authority.

"**§ 53C-10-301. Cease and desist order.**

Upon a finding that any action of a holding company subject to this Article may be in violation of any banking laws, the Commissioner, after a reasonable notice to the holding company and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the holding company fails to appeal the decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6, and continues to engage in the action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a civil money penalty of twenty thousand dollars ($20,000) for each day it remains in violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a holding company's failure to comply with an order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 53C-10-302. Other control changes.**

Each holding company of a bank shall report to the Commissioner any changes in its directors, president, chief executive officer, or chief financial officer by the close of the second day on which the holding company is open for business following the change."

SECTION 5. G.S. 1-339.1(a) reads as rewritten:

"(a) A judicial sale is a sale of property made pursuant to an order of a judge or clerk in an action or proceeding in the superior or district court, including a sale pursuant to an order made in an action in court to foreclose a mortgage or deed of trust, but is not

...

(7) A sale made in the course of liquidation of a bank pursuant to ~~G.S. 53-20,~~ Article 9 of Chapter 53C of the General Statutes, or

...."

SECTION 6. G.S. 24-1.1A(d) reads as rewritten:

"(d) The loans or investments regulated by ~~G.S. 53-45~~ G.S. 53C-5-3 shall not be subject to the provisions of this section."

SECTION 7. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. 41-2.1, ~~53-146.1,~~ 53C-6-6, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

SECTION 8. G.S. 36C-1-102 reads as rewritten:

"**§ 36C-1-102. Scope.**

This Chapter applies to any express trust, private or charitable, with additions to the trust, wherever and however created. The term "express trust" includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk of superior court. This Chapter also applies to any trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. This Chapter does not apply to constructive trusts, resulting trusts, conservatorships, estates, ~~trust~~ Payable on Death accounts as defined in ~~G.S. 53-146.2,~~ G.S. 53C-6-7, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements under Chapter 33A of the General Statutes and Chapter 33B of the General Statutes, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another."

SECTION 9. G.S. 53-163.1(b) reads as rewritten:

"(b) Funds held in a fiduciary capacity by a depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the depository institution, provided that it shall first set aside under control of the trust department as collateral security, the classes of securities listed in G.S. 159-30(c) as being eligible for the investment of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of ~~G.S. 53-43(6).~~G.S. 53-163.3.

If such funds are deposited in a depository institution insured under the provisions of the Federal Deposit Insurance Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that act."

SECTION 10. Article 14 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-163.3. Fiduciary funds awaiting investment.**

A bank that is a trust institution may maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure all such deposits in the name of the trust department, whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits and shall be kept separate and apart from other assets of the trust department. Until all of the deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank. To the extent and in the amount such deposits may be insured by the FDIC, the amount of security required for such deposits by this section may be reduced. The Banking Commission shall have power to make such rules as it may deem necessary for the enforcement of the provisions of this section."

SECTION 11. G.S. 53-167 reads as rewritten:

"**§ 53-167. Expenses of supervision.**

~~Each licensee, for~~ For the purpose of defraying necessary expenses of the ~~Commissioner of Banks and his agents in supervising them,~~ Office of Commissioner of Banks for supervision, each licensee shall pay to the Commissioner ~~of Banks the fees prescribed in G.S. 53-122 at the times therein specified.~~ an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner as of December 31 of each year, or the date most nearly approximating that date. If the Commissioner determines that the financial condition or manner of operation of a consumer finance licensee warrants further examination or an increased level of supervision, the licensee may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in this section."

SECTION 12. G.S. 53-184(a) reads as rewritten:

"(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic disk, optical disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that such books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of ~~G.S. 53-167 and 53-122,~~G.S. 53-167, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by the Commissioner in such examination."

SECTION 13. G.S. 53-188 reads as rewritten:

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

The Commission may review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order or act may appeal, pursuant to ~~G.S. 53-92(d),~~ G.S. 53C-2-6(b), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~ G.S. 53C-2-6(b)."

SECTION 14. G.S. 53-208.27(b) reads as rewritten:

"(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d),~~ G.S. 53C-2-6(b), to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~ G.S. 53C-2-6(b)."

SECTION 15. G.S. 53-215 reads as rewritten:

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

Any aggrieved party in a proceeding under ~~G.S. 53-211~~ G.S. 53-211, 53C-10-102, or ~~G.S. 53-227.1~~ 53C-10-201 may, within 20 days after final decision of the Commissioner, appeal in writing any decision to the State Banking Commission. An appeal under this section shall be made pursuant to ~~G.S. 53-92(d).~~ G.S. 53C-2-6. Notwithstanding any other provision of law, any aggrieved party to a decision of the State Banking Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 16. G.S. 53-217 reads as rewritten:

"§ 53-217. Enforcement.

The Commissioner shall have the power to enforce the provisions of this Article through an action in any court of this State or any other state or in any court of the United States, as provided in ~~G.S. 53-94 and G.S. 53-134,~~ G.S. 53C-8-12, for the purpose of obtaining an appropriate remedy for violation of any provision of this ~~Article, including such criminal penalties as are contemplated by G.S. 53-134.~~Article. "

SECTION 17. G.S. 53-224.11(b) reads as rewritten:

"(b) A North Carolina State bank desiring to establish and maintain a branch in another state under this section shall file an application on a form prescribed by the ~~Commissioner and pay the branch application fee prescribed by regulation pursuant to G.S. 53-122.~~ Commissioner. If the Commissioner finds that the applicant has the financial resources sufficient to undertake the proposed expansion without adversely affecting its safety or soundness and that the establishment of the proposed branch is in the public interest, the Commissioner may approve the application. In acting on the application, the Commissioner shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish the branch when it has received the written approval of the Commissioner."

SECTION 18. G.S. 53-224.18 reads as rewritten:

"§ 53-224.18. Authority of State banks to establish interstate branches by merger.

With the prior approval of the Commissioner, a North Carolina State bank may establish, maintain, and operate one or more branches in a state other than North Carolina pursuant to an interstate merger transaction in which the North Carolina State bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant North Carolina State bank shall file an application on a form prescribed by the ~~Commissioner and pay the fee prescribed by regulation pursuant to G.S. 53-122.~~ Commissioner. The applicant shall also comply with the applicable provisions of ~~G.S. 53-12.~~ Part 2 of Article 7 of Chapter 53C of the General Statutes. If the Commissioner finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this State and is otherwise in the public interest, it shall approve the interstate merger transaction and the operation of branches outside of North Carolina by the North Carolina State bank. Such an interstate merger

transaction may be consummated only after the applicant has received the Commissioner's written approval."

SECTION 19. G.S. 53-224.20 reads as rewritten:

"**§ 53-224.20. Notice and filing requirements.**

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a North Carolina bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the Commissioner and pay the filing fee required by the Commissioner. All banks which are parties to such interstate merger transaction involving a North Carolina State bank shall comply with ~~G.S. 53-12~~ Part 2 of Article 7 of Chapter 53C of the General Statutes and with other applicable state and federal laws. Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall comply with Article 15 of Chapter 55 of the North Carolina General Statutes."

SECTION 20. G.S. 53-224.24(a) reads as rewritten:

"(a) The Commissioner may make such examinations of any branch of an out-of-state state bank established under this Article and located in this State as the Commissioner may deem necessary to determine whether the branch is operating in compliance with the laws of this State and to ensure that the branch is being operated in a safe and sound manner. The provisions of ~~G.S. 53-117~~ Article 8 of Chapter 53C of the General Statutes apply to such examinations."

SECTION 21. G.S. 53-224.30 reads as rewritten:

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

Any aggrieved party in a proceeding under this Article may, within 20 days after final decision of the Commissioner, appeal, in writing, such decision to the North Carolina State Banking Commission. An appeal under this section shall be made pursuant to ~~G.S. 53-92(d).~~ G.S. 53C-2-6. Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~ G.S. 53C-2-6."

SECTION 22. G.S. 53-232.12(b) is repealed.

SECTION 23. G.S. 53-232.17 reads as rewritten:

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

Any aggrieved party in a proceeding under this Article may, within 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. An appeal under this section shall be made pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 24. G.S. 53-244.120(c) reads as rewritten:

"(c) The requirements of ~~G.S. 53-99(b)~~G.S. 53C-2-7 regarding the privacy or confidentiality of any information or material provided under subsections (a) and (b) of this section, and any privilege arising under any other federal or State law with respect to such information or material, shall continue to apply to the information or material after it has been disclosed to an entity described in subsection (a) or (b) of this section. Information or material held by such an entity shall not be subject to disclosure under any State law governing the disclosure to the public of information held by an officer or agency of the State. The entities described in subsections (a) and (b) of this section may share information and material with all State and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by State or federal law."

SECTION 25. G.S. 53-244.121 reads as rewritten:

"**§ 53-244.121. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or act of the Commissioner made pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or act may, pursuant to ~~G.S. 53-92(d),~~ G.S. 53C-2-6, appeal to the Banking Commission for review upon giving 20 days' written notice after the rule, regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal from a contested case proceeding before the Commissioner, shall set forth in numbered order the assignments of error for review by the Banking Commission. Failure to specify the assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 26. G.S. 53-252 reads as rewritten:

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

The Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d),~~G.S. 53C-2-6, to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 27. G.S. 53-272 reads as rewritten:

"**§ 53-272. Appeals.**

The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d),~~ G.S. 53C-2-6, to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 28. G.S. 53-289 reads as rewritten:

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

The Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d),~~G.S. 53C-2-6, to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 29. G.S. 53-301(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

...

(7) "Branch" has the meaning set forth in ~~G.S. 53-1(1a).~~G.S. 53C-1-4(11).

...."

SECTION 30. G.S. 53-359(b) reads as rewritten:

"(b) A merger or share exchange authorized by subsection (a) of this section, shall be governed by Article 11 of Chapter 55 of the General Statutes and ~~G.S. 53-17.~~G.S. 53C-7-205. An acquisition or transfer of assets authorized by subsection (a) of this section shall be governed by Article 12 of Chapter 55 of the General Statutes and ~~G.S. 53-17.~~G.S. 53C-7-205."

SECTION 31. G.S. 53-366 reads as rewritten:

"**§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust company.**

(a) Except as otherwise provided in this Article, the following provisions of this Chapter shall apply to authorized trust institutions:

~~(1) G.S. 53-14;~~

~~(2) G.S. 53-16;~~

(3) ~~G.S. 53-17;~~G.S. 53C-7-205.

~~(4) G.S. 53-68;~~

~~(5) G.S. 53-77.3;~~

~~(6) G.S. 53-85;~~

(7) Article 8 of ~~this~~ Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:

a. ~~G.S. 53-95;~~G.S. 53C-8-2.

b. ~~G.S. 53-104;~~G.S. 53C-8-3.

c. ~~G.S. 53-105;~~G.S. 53C-8-17.

~~d. G.S. 53-106; and~~

~~e. G.S. 53-107.1(a), (b) and (d).~~

~~(8) Article 9 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-119.~~

~~(9) Article 10 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-135, and except that G.S. 53-131 and G.S. 53-132 shall not apply to authorized trust institutions.~~

(10) Article 14 of this Chapter.

(b) Rules adopted by the Commissioner to implement those provisions of this Chapter made applicable to authorized trust institutions by subsection (a) of this section also shall apply to authorized trust institutions unless the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to trust business or trust marketing.

(c) Activities of authorized trust institutions for clients shall not be considered the sale or issuance of checks under ~~G.S. 53-194.~~ Article 16 of Chapter 53 of the General Statutes.

(d) Until the Commissioner has issued new rules governing State trust companies, State trust companies shall be governed by rules issued by the Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to the business of a State trust company.

(e) Notwithstanding any other provision of this Chapter, a State trust company:

~~(1) Is a "banking entity" for purposes of G.S. 53-127;~~

(2) Is a "bank" for purposes of laws made applicable to authorized trust institutions in this section and for purposes of G.S. 53-277.

(3) Is a trust company organized and doing business under the laws of the State of North Carolina, a substantial part of the business of which is exercising fiduciary powers similar to those permitted national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by the Commissioner as a banking institution; and

(4) Is a financial institution similar to a bank.

(f) In the case of a State trust company controlled by a company that has declared itself to be a "financial holding company" under 12 U.S.C. § 1843(l)(1)(C)(i), deposits held for an account shall be deemed to be "trust funds" within the meaning of 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly disclaimed. This subsection does not prescribe the nature or extend the scope of any fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits held for accounts shall be as provided by the instruments and laws applicable to those accounts.

(g) Subject to any limitations contained in this Article, an authorized trust institution is a "trust company", a "corporate trustee", a "corporate fiduciary", and a "corporation acting in a fiduciary capacity", as such and similar terms are used in the General Statutes, except where it clearly appears from the context in which those terms are used that a different meaning is intended."

SECTION 32. G.S. 53-368(c) is repealed.

SECTION 33. G.S. 53-385 reads as rewritten:

"**§ 53-385. Inventory.**

Within 90 days after the filing of a notice described in ~~G.S. 53-279,~~G.S. 53-379, the Commissioner shall file an inventory of the assets and liabilities, not including assets and liabilities held in accounts of the State trust company, of the State trust company. A copy of the inventory shall be filed with the clerk of the superior court of the county in which the action is pending, and a copy shall be kept on file with the State trust company. The inventory shall be open for inspection during usual business hours, provided that nothing herein shall require the State trust company to remain open unnecessarily."

SECTION 34. G.S. 53-412 reads as rewritten:

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

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

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

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

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be appealed, in writing, to the Commission for review, pursuant to ~~G.S. 53-92(d).~~ G.S. 53C-2-6. The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) Petitions for judicial review from the Commission shall be made to the Wake County Superior Court and shall proceed as provided in ~~G.S. 53-92(d).~~G.S. 53C-2-6."

SECTION 35. G.S. 54-73 reads as rewritten:

"**§ 54-73. Banking laws applicable.**

~~The statutes relating to banks and banking in this State, that is, G.S. 53-1 to 53-158 [G.S. 53-1 to 53-242],~~ The banking laws as defined in G.S. 53C-1-4(5), insofar as applicable and not in conflict with the provisions hereof shall apply to land mortgage associations."

SECTION 36. G.S. 54B-4(b) reads as rewritten:

"(b) As used in this Chapter, unless the context otherwise requires, the term:

...

(14a) "Commissioner" means the Commissioner of Banks authorized pursuant to ~~G.S. 53-92.~~Article 2 of Chapter 53C of the General Statutes.

...."

SECTION 37. G.S. 54B-34.2(a) reads as rewritten:

"(a) A savings and loan association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank, as defined under ~~G.S. 53-1(1),~~ G.S. 53C-1-4(4), or to a national bank or other form of depository institution and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts connected with the conversion including receipt of approval of the converting institution's plan of conversion by other federal or state regulatory agencies having jurisdiction over the institution upon completion of its conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination."

SECTION 38. G.S. 54B-46(a) reads as rewritten:

"(a) Any bank, as defined in ~~G.S. 53-1,~~ G.S. 53C-1-4(4), may convert to a stock association as provided in this section."

SECTION 39. G.S. 54B-47(a) reads as rewritten:

"(a) Any State association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to merge with any bank, as defined in ~~G.S. 53-1.~~ G.S. 53C-1-4(4)."

SECTION 40. G.S. 54B-54 reads as rewritten:

"**§ 54B-54. Deputy commissioner of Savings Institutions Division.**

There shall be a deputy commissioner of the Savings Institutions Division as appointed by the Commissioner in ~~G.S. 53-93.1(b).~~G.S. 53C-2-2. The deputy commissioner authorized by this section shall perform any duties and exercise any powers directed by the Commissioner."

SECTION 41. G.S. 54B-158 reads as rewritten:

"**§ 54B-158. Insured or guaranteed loans.**

An association may make insured or guaranteed loans in accordance with the provisions of ~~G.S. 53-45.~~G.S. 53C-5-3."

SECTION 42. G.S. 54C-4(b) reads as rewritten:

"(b) Unless the context otherwise requires, the following definitions apply in this Chapter:

...

(8a) Commissioner. – The Commissioner of Banks authorized pursuant to ~~G.S. 53-92.~~Article 2 of Chapter 53C of the General Statutes.

...."

SECTION 43. G.S. 54C-40(a) reads as rewritten:

"(a) A State savings bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to merge with any bank, as defined in ~~G.S. 53-1,~~ G.S. 53C-1-4(4), or any association, as defined in G.S. 54B-4."

SECTION 44. G.S. 54C-47(a) reads as rewritten:

"(a) A State savings bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank, as defined under ~~G.S. 53-1(1),~~ G.S. 53C-1-4(4), or to a national bank or other form of depository institution and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts connected with the conversion, including receipt of approval of the converting institution's plan of conversion by other federal or state regulatory agencies having jurisdiction over the institution upon completion of its conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination."

SECTION 45. G.S. 54C-122(e) reads as rewritten:

"(e) A savings bank may make insured or guaranteed loans in accordance with ~~G.S. 53-45.~~G.S. 53C-5-3."

SECTION 46. G.S. 116B-55 reads as rewritten:

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by ~~G.S. 53-43.7~~G.S. 53C-6-13 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65."

SECTION 47. G.S. 120-123 reads as rewritten:

"**§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

...

(3a) The State Banking Commission, as established by ~~G.S. 53-92.~~Article 2 of Chapter 53C of the General Statutes.

...."

SECTION 48. G.S. 143-143.9(1) reads as rewritten:

"(1) Bank. – A federally insured financial institution including institutions defined under ~~G.S. 53-1(1),~~G.S. 53C-1-4(4), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law."

SECTION 49. G.S. 164-11.6(a) reads as rewritten:

"(a) The chapters, subchapters, articles and sections now comprising Volume 2B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of ~~G.S. 53-1~~G.S. 53C-1-1 through 82-18, now in force, as amended, are hereby reenacted and designated as Replacement Volume 2B of the General Statutes of North Carolina."

SECTION 50. G.S. 164-11.7(a) reads as rewritten:

"(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of ~~G.S. 53-1~~G.S. 53C-1-1 to G.S. 105-462, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North Carolina."

SECTION 51. This act becomes effective October 1, 2012.

SENATE BILL 816:
Banking Law Modernization Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 22, 2012
Introduced by:	Sen. Brown	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Staff Attorney

SUMMARY: Senate Bill 816 rewrites much of the State's banking law as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.

[As introduced, this bill was identical to H951, as introduced by Rep. Brubaker, which is currently in House Banking.]

CURRENT LAW: The current banking law, Chapter 53 of the General Statutes, has remained largely unchanged since 1931. Since then there have been clarifying amendments and amendments to respond to changes in federal law, especially with regard to interstate banking and branching, and bank holding companies, but there has not been a comprehensive revision of the law.

BILL ANALYSIS: Senate Bill 816 repeals Articles 1 through 10, 12 and 13 of Chapter 53 of the General Statutes and creates a new Chapter 53C entitled "Regulation of Banks". The bill also renames Chapter 53 of the General Statutes "Regulation of Financial Services" to more accurately reflect the scope of the Chapter.

A new section is added to Chapter 53 to link the definitions from Chapter 53C to terms used in Chapter 53.

The following is a summary of the new Articles found in Chapter 53C:

Article 1 – General Provisions

- Defines the scope and applicability of the Chapter.
- Creates a much more comprehensive definitions section than under current law. The bill replaces the definitions under current law that reflects accounting and supervisory capital restrictions with definitions relating to capital adequacy. The definitions also describe the various banking organizations affected by the statute and the federal and state supervisory and regulatory agencies.
- Severability clause.

Article 2 – Commission and Commissioner

- Reauthorizes the Banking Commission. Reduces the membership to 15; adds a representative from the consumer finance industry.
- Reauthorizes the authority of the Commissioner and the Office of Commissioner of Banks.
- Restates the authority of the Commissioner, subject to approval of the Commission to adopt all necessary rules.
- Establishes uniform provisions for hearings and appeals for all statutes administered by the Commission and the Commissioner.

- Revises and expands the list of records which are confidential and extends the legally required confidentiality to legal discovery as well as other requests.

Article 3 – Organization of a Bank

- Authorizes an applicant to seek permission to organize a bank from the Commissioner. With the Commissioner's permission, the organizers may file articles of incorporation with the Secretary of State and continue the organizational process. Upon completion of the initial process, the bank's organization can be done through the corporation with funds held in an escrow account approved by the Commissioner.
- The proposed bank's articles of incorporation must contain information required by Chapter 55 (the Business Corporation Act). The bank cannot begin the business of banking, however, until the Commissioner issues a charter. The Commissioner's decision may be approved, modified, or disapproved by the Commission after a public hearing.
- The Commissioner may dissolve and liquidate a proposed bank if (1) the Commissioner does not recommend issuance of a charter; (2) the Commission denies approval of the charter; or (3) the charter is revoked because the bank does not open within 6 months or for other reasons.

Article 4 – Governance of a Bank

- Provides that banks must be formed as corporations under North Carolina law and shall be operated and controlled by the board of directors. The article establishes the qualifications and liabilities of directors.
- The board must establish at minimum, an audit, executive, and loan committees, and may establish others. Minutes of meetings must be recorded and maintained.
- Establishes the basis upon which the directors may declare a distribution.
- Requires officers and employees to give a bond.
- Provides when a bank may extend credit and engage in transactions with affiliates, directors, executive officers, principal shareholders, and their immediate families.
- Sets reserve fund requirements, including that banks that are not members of the Federal Reserve must meet requirements set by the Commissioner.
- Provides that banks may establish a compliance review committee to monitor and review state and federal laws, regulations, policies, and safe and sound banking practices. Compliance review documents are confidential.

Article 5 – Powers of Banks

- Lists seven express powers, including authority to engage in activities approved by the Commissioner, traditional bank activities, and activities permissible for banks under the FDIC Act. Also, confirms that a bank has all powers "necessary and incident" to carry out the business of banking. The exercise of new powers must get prior approval from the Commissioner.
- Restates the investment authority for banks. Permits investments in depository institutions, other specialized financial institutions, federally chartered institutions; and a variety of state and federal bonds.

- Recodifies former G.S. 53-45 which authorizes banks, and other fiduciaries to invest in securities approved by the Secretary of HUD, FHA, and VA.

Article 6 – Bank Operations

- Establishes the numerous aspects of a bank's lending function. Prohibits loans to finance the purchase of the bank's stock or "to carry" the stock. Provides rules for the maximum amount of loans that may be made to a single borrower. Prevents the Commissioner from adopting rules that preclude a state bank from making loans that would be permitted to a federally chartered institution.
- Authorizes banks to offer all types of deposit accounts and requires the bank to obtain FDIC insurance on accounts.
- Authorizes banks to deal with a minor like an adult for purposes of deposit accounts, including with regard to safe deposit boxes. Also, provides the structure for simple account opened by an adult for a minor. This does not alter the Uniform Transfer to Minors Act.
- Authorizes banks to establish deposit accounts or lease a safe deposit box to persons purporting to be trustees without requiring or seeing further documentation.
- Establishes the incidents of joint accounts and sets specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts.
- Establishes the incidents of Payable on Death (POD) accounts and provides a model disclosure form.
- Establishes the incidents of personal agency accounts and provides a model disclosure form.
- Defines the bank's duty in a number of cases, including payment of the balance of an account of a person who is deceased or under a disability; payment pursuant to a power of attorney; when and how account statements must be sent and are deemed final; safe deposit boxes, unpaid rentals; and reproduction and retention of records.
- Sets the process for establishment of branches. The Commissioner's approval is required to open a branch, to change the location of a branch or a principal office, or to close a branch.
- Sets the process for banks to establish nonbranch bank business offices.
- Provides that the bank management has discretion to determine the days and hours of the bank's operation. The Commissioner may authorize banks to suspend operation during an emergency.
- Requires notice to the Commissioner if an out-of-state bank intends to establish or buy a branch in North Carolina.

Article 7 – Control Transactions; Combinations; Conversions

- Part 1. - Requires the approval of the Commissioner before a person may engage in a control transaction. Authorizes a contract for a control transaction to be executed without approval so long as consummation of the transaction is contingent on the Commissioner's approval. A control transaction applicant must file an application, filing fee, (currently set in rules) and any additional information required with the Commissioner. The applicant must publish public notice of the application. The Commissioner must act on the application within 60 days, absent extraordinary circumstances.

- Part 2. - Sets the process for dealing with combination applications. The application must include copies of agreements under which the combination is proposed and any information required by the Commissioner. Applicant must publish public notice. Commissioner must act on the application within 60 days, absent extraordinary circumstances. Authorizes the establishment of an interim bank to effectuate the combination. Also, authorizes combination with a subsidiary.
- Part 3. - Sets the process by which a financial institution may convert to a North Carolina bank charter. Also, authorizes a state bank to convert to another type of institution.

Article 8 – Bank Supervision

- Restates the Commissioner's authority to supervise banks, including the authority to order an examination or investigation of any suspected violation of the banking laws.
- Sets the schedule of bank assessment brackets. The operation of Office of Commissioner of Banks is funded by these assessments. This provision does not change current law.
- Requires banks to file annual and periodic reports of condition.
- Grants broad authority to the Commissioner to examine a bank, its holding company and affiliates, including access to all books and records of the bank, its holding company or affiliate.
- Makes it a Class H felony for an examiner to knowingly or willfully make a false report after an examination. It is a Class 1 misdemeanor for an examiner or other employee of OCOB to fail to keep secret facts or information obtained in an examination.
- Makes it a Class 1 misdemeanor for a bank to make any loan or give any gratuity to the Commissioner or any examiner. Also, makes it a Class 1 misdemeanor to transmit false statements about financial condition of a bank.
- Authorizes the Commissioner to issue a show cause order to place a bank under supervisory control, when the Commissioner believes the bank has insufficient capital or is being operated in an unsafe or unsound manner that threatens the financial integrity of the bank. The Commissioner may also issue an order temporarily removing an officer, director or employee of the bank if the Commissioner believes the person has violated the law or engaged in unsafe or unsound practices or for other reasons.
- Authorizes the Commissioner to enter cooperative supervisory and information sharing agreements with out-of-state bank regulatory agencies.

Article 9 – Supervisory Liquidation; Voluntary Dissolution and Liquidation

- Part 1. - Authorizes the Commissioner to require a combination or other control transaction, upon a finding that the bank is unable to operate in a safe and sound manner. The Commissioner may order that the transaction take place without the vote of the equity owners of the bank which would otherwise be required. Prohibits a bank in the process of either voluntary or involuntary dissolution from paying distributions to its shareholders without the prior written consent of the Commissioner. Establishes the procedural requirements for the Commissioner to cancel a charter.
- Part 2. – Authorizes a bank, with the Commissioner's approval, to undertake a voluntary dissolution and liquidation.

- Part 3. – Sets forth the process for the Commissioner to take custody of the books, records, and assets of a bank, and appointing a receiver for the purpose of receivership and liquidation of the bank.
- Part 4. – Establishes the provisions relating to any dissolution or receivership, including storage and destruction of records, termination of trusts and appointment of successor or substitute trustee.

Article 10 – Bank Holding Companies

- Part 1. - Requires holding companies to register with the Commissioner and to renew registration annually. Requires the approval of the Commissioner before a person may engage in a control transaction. The process is similar to that required in Article 7.
- Part 2. – Authorizes combinations of one or more holding companies or other companies with the approval of the Commissioner. The process is similar to that required in Article 7.
- Part 3. – Authorizes the Commissioner to issue cease and desist orders to holding companies upon a finding that it may have violated the laws of this State. Requires holding companies to notify the Commissioner of changes in key personnel within two business days of the change.

Sections 5 through 50 of the bill make conforming changes to various sections of the General Statutes. These sections contained references to sections of the banking law that are repealed by this act.

EFFECTIVE DATE: This act becomes effective October 1, 2012.

S816-SMRO-51(e1) v1

SENATE BILL 810*

Short Title:	Regulatory Reform Act of 2012.	(Public)
Sponsors:	Senators Rouzer, Brown, Davis; Brock, Gunn, Jackson, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (2) MAKE VARIOUS TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (3) EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5) REQUIRE AGENCIES TO GIVE WRITTEN NOTICE BEFORE AUDITING OR EXAMINING A BUSINESS; (6) CLARIFY THAT THE DISCHARGE OF WASTE INTO WATERS OF THE STATE DOES NOT INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF WATER FROM NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE ORGANIC COMPOUNDS; (8) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRACK AND REPORT ON PERMIT PROCESSING TIMES; (9) DELAY THE EFFECTIVE DATE FOR COMPLIANCE WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1, 2012, TO JANUARY 1, 2013; AND (10) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO AMEND THE RULES GOVERNING THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE REVIEWED, AS RECOMMENDED BY THE JOINT REGULATORY REFORM COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.3 of S.L. 2011-291 is repealed.

SECTION 2. G.S. 150B-18 reads as rewritten:

"**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbindinginterpretive statement has not been adopted as a rule in accordance with this Article."

SECTION 3. G.S. 150B-19.1 reads as rewritten:

"**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

(1) The text of a proposed rule.
(2) An explanation of the proposed rule and the reason for the proposed rule.
(3) The federal certification required by subsection (g) of this section.
(4) Instructions on how and where to submit oral or written comments on the proposed rule.
(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption. If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body mustand approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Before an agency submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Office of State Budget and Management and obtain a certification from the Office that the agency adhered to the principles set forth in this section. This subsection does not apply to agencies that are within the departments of the Council of State other than the Governor."

SECTION 4. G.S. 150B-21.4(a) reads as rewritten:

"(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office that the funds that would be required by the proposed rule change are available. The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change."

SECTION 5. G.S. 150B-23.2(b) reads as rewritten:

"(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case (except in suits in forma pauperis).except as may be allowed by rule to permit or complete late payment or in suits in forma pauperis."

SECTION 6. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article."

SECTION 7. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a decision, by the agency in making a final decision, decision or by the court on judicial review."

SECTION 8. Section 63 of S.L. 2011-398 reads as rewritten:

"**SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. With regard to contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of this act become effective when the United States Environmental Protection Agency approvals referenced in Section 55.2 have been issued or June 15, 2012, October 1, 2012, whichever occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes law.

SECTION 9. G.S. 116B-73(a) reads as rewritten:

"(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years five years after the holder files the report, unless a shorter period is provided by rule of the Treasurer."

SECTION 10. Article 1 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-10.1. Limitations on audits and examinations by agencies.**

Unless otherwise provided by statute or rule, a State agency that is authorized to audit or examine a business or individual shall provide at least seven days' written notice to the business or individual before conducting the audit or examination and shall describe with reasonable specificity the records of the business or individual that the agency seeks to review in the audit or examination process."

SECTION 11. G.S. 143-213 reads as rewritten:

"**§ 143-213. Definitions.**

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A and 21B of this Chapter are defined as follows:

...

(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.

...

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

...."

SECTION 12.(a) Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A of S.L. 2010-31 are repealed.

SECTION 12.(b) G.S. 87-97 reads as rewritten:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

...

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional parameters parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites.

...."

SECTION 13. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.17. Tracking and report on permit processing times.**

The Department of Environment and Natural Resources shall track the time required to process all permit applications received by the Department. The processing time tracked shall include (i) the total processing time from when an initial permit application is received to issuance or denial of the permit and (ii) the processing time from when a complete permit application is received to issuance or denial of the permit. No later than March 1 of each year, the Department shall report to the Fiscal Research Division of the General Assembly and the

Environmental Review Commission on the permit processing times required to be tracked pursuant to this section."

SECTION 14. Section 3.(b) of S.L. 2011-39 is rewritten to read:

"**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act through July 1, 2012,January 1, 2013, the Department of Environment and Natural Resources shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7)."

SECTION 15. No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct a five-year phase of landfill development and apply to amend the permit to construct subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a 10-year phase of landfill development and apply to amend the permit to construct subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills set forth under G.S. 130A-295.8, and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development.

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

SENATE BILL 810:
Regulatory Reform Act of 2012

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 22, 2012
Introduced by:	Sens. Rouzer, Brown, Davis	**Prepared by:**	Karen Cochrane-Brown and Jeff Hudson Staff Attorneys
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 810 makes several technical and clarifying changes to the Regulatory Reform Act of 2011 as well as a number of other substantive changes as recommended by the Joint Regulatory Reform Committee.***

BILL ANALYSIS:

Section 1: This section repeals a provision contained in S.L. 2011-291 to restore the Joint Legislative Administrative Procedure Oversight Committee. This Committee was originally established in 1995 to oversee the administrative procedures of State agencies. It was abolished last year. This section would reestablish the Committee.

Section 2: This section clarifies that an agency may not enforce an interpretive statement that has not been adopted as a rule in accordance with the Administrative Procedure Act.

'ection 3. This section makes a number of clarifying changes to G.S. 150B-19.1, which requires that ..gencies adhere to a number of regulatory principles when developing and drafting rules. The section also adds a new subsection (h) which provides that agencies that are under the supervision of the Governor must obtain a certification from the Office of State Budget and Management that they have complied with the principles.

Section 4. This section makes a conforming change to delete reference to the certification from the fiscal note section.

Section 5. This section amends a provision related to the time within which the Office of Administrative Hearings must collect filing fees in contested cases. The amendment would allow the Office to adopt rules for accepting payments after a petition has been filed.

Section 6. This section clarifies that only a party, an attorney representing a party, or a representative of the party that has been specifically authorized by law may sign a petition commencing a contested case.

Section 7. This section deletes an obsolete reference to an agency making a final decision in a contested case. The Regulatory Reform Act of 2011 granted final decision making authority to administrative law judges.

Section 8. This section amends the effective date for two provisions contained in the Regulatory Reform Act of 2011. With regard to contested cases involving certain federal laws administered by the Department of Environment and Natural Resources, the change to final decision making authority required approval from the federal EPA. The original effective date was the earlier of the date the approval was issued or June 15, 2012. This section extends that date until October 1, 2012.

With regard to contested cases involving Medicaid decisions, DHHS was directed to seek a waiver from the federal government to allow the change to final decision making authority. The provisions became

effective January 1, 2012, however, the waiver has not yet been granted. This section extends the effective date until February 1, 2013.

Section 9. This section reduces the time during which a holder must maintain records related to unclaimed property from ten to five years.

Section 10. This section adds a new provision to the law requiring that all State agencies must provide at least seven days written notice before conducting an audit or examination of a business or individual and must describe any records to be examined with reasonable specificity.

Section 11. This section would amend the definitions that apply to a number of environmental statutes to clarify that the discharge of waste into waters of the State does not include the release of air contaminants into the outdoor atmosphere.

Section 12. This section would repeal existing legislation that requires the Commission for Public Health to adopt rules for the testing of new drinking water wells for the presence of certain volatile organic compounds or VOCs. Section 12 would instead authorize the Commission for Public Health to adopt such rules if the Commission finds that testing for VOCs is necessary to protect public health. Section 12 would also provide certain factors that the Commission should consider if it chooses to adopt VOC testing rules.

Section 13. This section would direct the Department of Environment and Natural Resources to track and report on the processing times of all permit applications it receives.

Section 14. This section would delay the effective date for compliance with wading pool fencing requirements from July 1, 2012 to January 1, 2013.

Section 15. This section would direct the Commission for Public Health to amend its rules governing the duration of permits for sanitary landfills in order to provide landfill owners and operators the option for longer term permits and permit review periods.

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

S810-SMRO-50(e1) v1

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 22, 2012

Name of Committee — **Date**

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Kathy Hewick	Duke Energy
BRUCE THOMPSON	PARKER POE
David Allen	NCRMA
Scott Mayfield	The Insider
Canaan Hoie	NCDOR
Michael Houser	NCDOR
Alan Woodard	NCDOR
Holly Safi	NCDOA
Jim Johnson	BSA
Mike Mann	NCTA
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Julie White	NCMMC
Keith McAllister	Kestava Energy Management LLC
M. H. Wolfe	PPAB
Zan Pope	Gov office
Matthew Etsby	SA
Andy Ellen	NCMM
P S P	NC AB
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Mary Penny Thompson	DENR

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David McHenry	NCAR
Daniel Blum	Troutman Sanders
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Margaret Hartzell	Environment North Carolina
Dan Conrad	NCCN
Cassidy Nolan	NCCN
David Heinen	NC Center for Nonprofits
Karen Leonard	NCACC
Heather Hutton	NCBA
Elizabeth Bise	Brooks Pierce
Ben Davis	Brooks Pierce / NCBA
Paul Fulton	HTGAC

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Julie Robinson	NC Sustainable Energy Assoc.
Erin Shaw	NC Sustainable Energy Assoc.
Will Morgan	NC Sierra Club
Kris Harlan	DHHS
Sara Khan	NCACC
JOE DELUCA	OAH-RRC
Penny Griffin	School of Gov.
Angie Maier	NCPC
Jim Crouch	NCBA
Tommy Stevens	NCPC

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Leah Elliott	EHGR
Matt Matthews	DENR/DWQ
Adam Stallings	NCREC
Jeff Sellers	NCREC
Chris Kucia	CMC
Nathan	NC Builders Assn.
[signature]	NS
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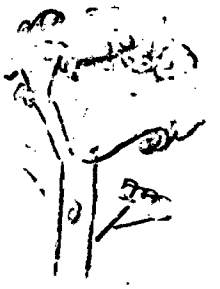
Robin Smith	DENR
Kari Barnes	DENR
Betsy Bailey	PENC
Berry Jenkins	Carolinas AGC
Jay Stem	NCAA
Linda Strunk Milkap	NCDOR



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Joseph A. Smith, Jr.	Poyner Spruill LLP
DANIEL GARNER	NC office of Comm of Banks
Alan Miller	ICLG
Candace Wright	Sen. Berger Intern
[illegible]	NCPBA & NCCTIA
[illegible]	RLA
Kyle Elliott	
Estherrae Davis	E Davis & Assoc
Joan Walker	NC Sustainable Energy Association
COLIN TOMMERSON	SOUTHERN ENERGY MANAGEMENT
Susanna Hartley	K&L Gates

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Senate Commerce Committee — May 22, 2012

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Stephen Kouba	Compass NC
Heather Robinson	NCPMA
Glenda Pearce	DHHS - Social Services
George Smith	Williams Mullen
Bobby Bryan	OAH / RRC
Molly Masich	OAH
Lauren Whaley	NCCUC
Maeve Gardner	GSK
David Barnes	PS
Allison Waller	Nelson Mullins
Chris Dillon	NCMIC

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Senate Commerce Committee — May 22, 2012

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Ethan Cage	"
Dirk Vanderhoven	Atty.
Sarah Compton	Atty
Henry Jones	Jordan Price
Tom Cores	TNC
Dr. Matthews	Div of Waste Management-ENR
Annaliese Bonar	DENR
Cameron Hanley	Electricities
Stuart Brooks	Ward & Smith
Henry M Lancaster	LCA

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Senate Commerce Committee — May 22, 2012

Name of Committee — **Date**

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Tom Bean	EDF
Allen Hardison	CRSWMA
Cameron Hunt	Electrolux
Tom Bird	
Elise Quick	Troutman Sanders
Karen Bertmar	Troutman Sanders
Becki Gray	John Locke Foundation

SENATE COMMERCE COMMITTEE
Thursday, May 24, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 10:00 AM on Thursday, May 24, 2012 in room 1027 of the Legislative Building. Nineteen members of the committee were present. Jamie Byrum and Jackson Hooks of Wilson, Jane Albrecht Amad of Maryland, Kelsey Cagle of Belmont, Christina Lee of Four Oaks and Braxton Becoats of Durham served as pages. Senator Brown and Senator Gunn presided as chairs.

S.B. 810 – Regulatory Reform Act of 2012

Senator Rouzer was recognized to explain the bill. Senator Hunt moved to adopt the proposed committee substitute (PCS) and the motion carried. The PCS makes several technical and clarifying changes to the Regulatory Reform Act of 2011 as well as a number of other substantive changes as recommended by the Joint Regulatory Reform Committee. Senator Jackson moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 806 – Modify Mortgage Regulation Funding

Senator Brown recognized Karen Cochrane-Brown, an attorney with the Research Division, to explain the bill and answer questions. The bill would amend the law relating to regulation of the mortgage industry to change the way regulation is funded from a fee based to an assessment based system. The bill was recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws. McNeil Chestnut, Deputy Attorney General, was recognized to answer questions. George Teague, representing the Mortgage Bankers Association of the Carolinas, was recognized for comments. He felt that the bill provided an equitable solution for mortgage brokers and is similar to other states' laws. Senator Hunt moved for a favorable report with a referral to the Senate Finance Committee. The motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:18 AM.

Senator Harry Brown, Presiding Chair

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 24, 2012	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 806	Modify Mortgage Regulation Funding.	Senator Brown
SB 810	Regulatory Reform Act of 2012.	Senator Rouzer Senator Brown Senator Davis

Senator Harry Brown, Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, May 24, 2012

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

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

S.B. **810** Regulatory Reform Act of 2012.

Draft Number:	15231
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

S810 – Sen. Rouzer

Senate Commerce Committee
Thursday, May 24, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 806	Modify Mortgage Regulation Funding.	Senator Brown
SB 810	Regulatory Reform Act of 2012.	Senator Rouzer Senator Brown Senator Davis

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 810*
PROPOSED COMMITTEE SUBSTITUTE S810-CSRO-33 [v.1]

5/23/2012 5:31:24 PM

Short Title: Regulatory Reform Act of 2012. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (2) MAKE VARIOUS TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (3) EXTEND THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5) DIRECT AGENCIES TO SUBMIT A REPORT ON NOTICE GIVEN BEFORE AUDITING OR EXAMINING A BUSINESS TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (6) CLARIFY THAT THE DISCHARGE OF WASTE INTO WATERS OF THE STATE DOES NOT INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF WATER FROM NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE ORGANIC COMPOUNDS; (8) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRACK AND REPORT ON PERMIT PROCESSING TIMES; (9) DELAY THE EFFECTIVE DATE FOR COMPLIANCE WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1, 2012, TO JANUARY 1, 2013; AND (10) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO AMEND THE RULES GOVERNING THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE REVIEWED, AS RECOMMENDED BY THE JOINT REGULATORY REFORM COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.3 of S.L. 2011-291 is repealed.

SECTION 2. G.S. 150B-18 reads as rewritten:

"**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other ~~nonbinding~~ interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other ~~nonbinding~~interpretive statement has not been adopted as a rule in accordance with this Article."

SECTION 3. G.S. 150B-19.1 reads as rewritten:

"**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.

(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.

(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.

(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.

(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its ~~Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2~~ Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

(1) The text of a proposed rule.

(2) An explanation of the proposed rule and the reason for the proposed rule.

(3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule.

(5) Any fiscal note that has been prepared for the proposed rule.

~~The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.~~ If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule ~~with the rule-making body, and the rule-making body must~~and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to

the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Before an agency that is within the Governor's cabinet submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Office of State Budget and Management and obtain a certification from the Office that the agency adhered to the principles set forth in this section. Before an agency that is within the departments of the Council of State other than the Governor submits the proposed text of a permanent rule change for publication in the North Carolina Register, the agency must submit the text of the proposed rule change and an analysis of the proposed rule change to the Commission and obtain a certification from the Commission that the agency adhered to the principles set forth in this section. The Office of State Budget and Management or the Commission, respectively, must respond to an agency's request for certification within 20 days of receipt of the request."

SECTION 4. G.S. 150B-21.4(a) reads as rewritten:

"(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office that the funds that would be required by the proposed rule change are available. ~~The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1.~~ The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change."

SECTION 5. G.S. 150B-23.2(b) reads as rewritten:

"(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case ~~(except in suits in forma pauperis).~~except as may be allowed by rule to permit or complete late payment or in suits in forma pauperis."

SECTION 6. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute

concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a ~~party or a representative of the party~~ party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article."

SECTION 7. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a ~~decision, by the agency in making a final decision,~~ decision or by the court on judicial review."

SECTION 8. Section 63 of S.L. 2011-398 reads as rewritten:

"**SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. With regard to contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of this act become effective when the United States Environmental Protection Agency approvals referenced in Section 55.2 have been issued or ~~June 15, 2012,~~ October 1, 2012, whichever occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes law.

SECTION 9. G.S. 116B-73(a) reads as rewritten:

"(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for ~~10 years~~ five years after the holder files the report, unless a shorter period is provided by rule of the Treasurer."

SECTION 10. Each State agency, as defined in G.S. 150B-2(1a), shall submit a report of the audit, examination and inspection functions performed by the agency and the amount of notice, if any, that the agency is required, by law or rule, to provide to a business or individual prior to conducting the audit, examination, or inspection. The agency shall submit

the report to the Joint Legislative Administrative Procedure Oversight Committee, as reestablished by Section 1 of this act, no later than October 31, 2012.

SECTION 11. G.S. 143-213 reads as rewritten:

"**§ 143-213. Definitions.**

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A and 21B of this Chapter are defined as follows:

...

(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.

...

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

...."

SECTION 12.(a) Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A of S.L. 2010-31 are repealed.

SECTION 12.(b) G.S. 87-97 reads as rewritten:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

...

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional ~~parameters~~ parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites.

...."

SECTION 13. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.17. Tracking and report on permit processing times.**

The Department of Environment and Natural Resources shall track the time required to process all permit applications received by the Department. The processing time tracked shall include (i) the total processing time from when an initial permit application is received to issuance or denial of the permit and (ii) the processing time from when a complete permit application is received to issuance or denial of the permit. No later than March 1 of each year, the Department shall report to the Fiscal Research Division of the General Assembly and the Environmental Review Commission on the permit processing times required to be tracked pursuant to this section."

SECTION 14. Section 3.(b) of S.L. 2011-39 is rewritten to read:

"**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act through ~~July 1, 2012,~~January 1, 2013, the Department of Environment and Natural Resources shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7)."

SECTION 15. No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct a five-year phase of landfill development and apply to amend the permit to construct subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a 10-year phase of landfill development and apply to amend the permit to construct subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills set forth under G.S. 130A-295.8, and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development.

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

SENATE BILL 810:
Regulatory Reform Act of 2012

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 23, 2012
Introduced by:	Sens. Rouzer, Brown, Davis	**Prepared by:**	Karen Cochrane-Brown and Jeff Hudson Staff Attorneys
Analysis of:	PCS to First Edition S810-CSRO-33		

SUMMARY: ***Senate Bill 810 makes several technical and clarifying changes to the Regulatory Reform Act of 2011 as well as a number of other substantive changes as recommended by the Joint Regulatory Reform Committee.***

BILL ANALYSIS:

Section 1: This section repeals a provision contained in S.L. 2011-291 to restore the Joint Legislative Administrative Procedure Oversight Committee. This Committee was originally established in 1995 to oversee the administrative procedures of State agencies. It was abolished last year. This section would reestablish the Committee.

Section 2: This section clarifies that an agency may not enforce an interpretive statement that has not been adopted as a rule in accordance with the Administrative Procedure Act.

Section 3. This section makes several clarifying changes to G.S. 150B-19.1, which requires that agencies adhere to a number of regulatory principles when developing and drafting rules. The section also adds a new subsection (h) which provides that agencies that are under the supervision of the Governor must obtain a certification from the Office of State Budget and Management that they have complied with the principles. ***The PCS adds language to this subsection providing that agencies within the Council of State other than the Governor must obtain certification from the Rules Review Commission. In addition, both OSBM and the RRC must respond to a request for certification within 20 days.***

Section 4. This section makes a conforming change to delete reference to the certification from the fiscal note section.

Section 5. This section amends a provision related to the time within which the Office of Administrative Hearings must collect filing fees in contested cases. The amendment would allow the Office to adopt rules for accepting payments after a petition has been filed.

Section 6. This section clarifies that only a party, an attorney representing a party, or a representative of the party that has been specifically authorized by law may sign a petition commencing a contested case.

Section 7. This section deletes an obsolete reference to an agency making a final decision in a contested case. The Regulatory Reform Act of 2011 granted final decision making authority to administrative law judges.

Section 8. This section amends the effective date for two provisions contained in the Regulatory Reform Act of 2011. With regard to contested cases involving certain federal laws administered by the Department of Environment and Natural Resources, the change to final decision making authority required approval from the federal EPA. The original effective date was the earlier of the date the approval was issued or June 15, 2012. This section extends that date until October 1, 2012.

With regard to contested cases involving Medicaid decisions, DHHS was directed to seek a waiver from the federal government to allow the change to final decision making authority. The provisions became effective January 1, 2012, however, the waiver has not yet been granted. This section extends the effective date until February 1, 2013.

Section 9. This section reduces the time during which a holder must maintain records related to unclaimed property from ten to five years.

Section 10. The PCS deletes the requirement that agencies provide written notice before conducting an audit or examination and substitutes a direction to all State agencies to submit a report of their auditing and examination functions, including and notice requirements, to the Joint Legislative Administrative Procedure Oversight Committee by October 31, 2012.

Section 11. This section would amend the definitions that apply to a number of environmental statutes to clarify that the discharge of waste into waters of the State does not include the release of air contaminants (particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof) into the outdoor atmosphere.

Section 12. This section would repeal existing legislation that requires the Commission for Public Health to adopt rules for the testing of new drinking water wells for the presence of certain volatile organic compounds or VOCs. Section 12 would instead authorize the Commission for Public Health to adopt such rules if the Commission finds that testing for VOCs is necessary to protect public health. Section 12 would also provide certain factors that the Commission should consider if it chooses to adopt VOC testing rules.

Section 13. This section would direct the Department of Environment and Natural Resources to track and report on the processing times of all permit applications it receives.

Section 14. This section would delay the effective date for compliance with wading pool fencing requirements from July 1, 2012 to January 1, 2013.

Section 15. This section would direct the Commission for Public Health to amend its rules governing the duration of permits for sanitary landfills in order to provide landfill owners and operators the option for longer term permits and permit review periods.

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

S810-SMRO-54(CSRO-33) v1

SENATE BILL 806*

Short Title:	Modify Mortgage Regulation Funding.	(Public)
Sponsors:	Senator Brown.	
Referred to:	Commerce.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19B of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-244.100A. Assessments.**

(a) For the purpose of meeting the cost of regulation under this Article, each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall pay into the OCOB an assessment as provided in this subsection. The annual assessment shall consist of a base amount of two thousand dollars ($2,000) for volumes of no more than one million five hundred thousand dollars ($1,500,000) plus an additional sum, calculated on the loan and servicing dollar volume reported by the licensee to the OCOB for the previous calendar year. If a licensee has both loan and servicing volume, those amounts shall be added together and the assessment shall be calculated from the table below as follows:

Loan and/or Servicing Dollar Volume		Per Thousand
$1,500,001 to	$2,500,000	$0.07
$2,500,001 to	$5,000,000	$0.06
$5,000,001 to	$10,000,000	$0.05
$10,000,001 to	$30,000,000	$0.04
$30,000,001 to	$100,000,000	$0.03
$100,000,001 to	$1,300,000,000	$0.02
More Than $1,300,000,001		$0.01

(b) The Commissioner may collect the assessment provided for in subsection (a) of this section annually or in periodic installments as approved by the Commission."

SECTION 2. G.S. 53-244.101 reads as rewritten:

"**§ 53-244.101. License renewal.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this ~~section~~ section. A mortgage loan originator shall pay a nonrefundable renewal fee of one hundred twenty-five dollars ($125.00) ~~and by paying to the Commissioner, in addition to~~plus the actual cost of obtaining credit reports and State and national criminal history record checks and ~~of~~ processing fees ~~of~~ for the ~~nationwide system~~ Nationwide Mortgage Licensing System and Registry as the Commissioner shall ~~require, nonrefundable renewal fees as follows:~~ require.

~~(1) Licensed mortgage lenders, licensed mortgage brokers, and licensed mortgage servicers shall pay an annual renewal fee of six hundred twenty-five dollars ($625.00), licensed exclusive mortgage brokers shall pay an annual renewal fee of three hundred dollars ($300.00), and licensed mortgage lenders and mortgage brokers shall pay three hundred dollars ($300.00) for each licensed branch office.~~

~~(2) Licensed mortgage loan originators shall pay an annual renewal fee of one hundred twenty-five dollars ($125.00).~~

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate that:

(1) The licensee continues to meet the initial minimum standards for licensure under G.S. 53-244.060;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in G.S. 53-244.102; and

(3) The licensee has paid all required fees ~~for renewal of the license.~~and assessments.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars ($250.00) as a nonrefundable late ~~fee in addition to the renewal fee set forth in subsection (b) of this section.~~ fee. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars ($100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by whom the person is employed, over which the person has control, or as to which the person is the current or proposed qualifying individual or current or proposed branch manager."

SECTION 3. G.S. 53-244.115 reads as rewritten:

"**§ 53-244.115. Investigation and examination authority.**

(a) For purposes of initial licensing, license renewal, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine compliance with this Article, the Commissioner ~~may, at the expense of the applicant or licensee,~~may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

(1) Criminal, civil, and administrative history information, including nonconviction data;

(2) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information, or evidence the Commissioner deems relevant to the inquiry, investigation, or examination regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The Commissioner may interview the officer, principals, person with control, qualified individual, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. ~~The reasonable cost of the investigation or examination shall be charged against the licensee, individual, or person subject to this Article.~~ The assessment set forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation under this Article. Any investigation or examination that, in the opinion of the Commissioner of Banks, requires extraordinary review, investigation, or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time, to be determined annually by the Banking Commission.

(c) Each licensee, individual, or person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee, individual, or person. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information. Each licensee, individual, or person subject to this Article shall also make available for interview by the Commissioner the officers, principals, persons with control, qualified individuals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the Commissioner;

(3) Periodic reports, including:

a. Annual Report Questionnaire,

b. Servicer Activity Report,

c. Servicer Schedule of the Ranges of Costs and Fees,

d. Lender/Servicer Audited Statements of Financial Condition,

e. Broker Certified Statements of Financial Condition, and

f. Quarterly Loan Origination Reports.

(4) Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents

and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Article;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the license, if the licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

(1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business;

(2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article; or

(3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any entity:

a. By whom or by which the applicant is employed,

b. Over which the applicant has control, or

c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, individual, or person subject to this Article acts or claims to act under any licensing law of the State, or claims to act without such authority."

SECTION 4. G.S. 53-244.119(e) is repealed.

SECTION 5. This act becomes effective October 1, 2012.

SENATE BILL 806:
Modify Mortgage Regulation Funding

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	May 23, 2012
Introduced by:	Sen. Brown	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 806 would amend the law relating to regulation of the mortgage industry to change the way regulation is funded from a fee based to an assessment based system. This bill was recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.

[As introduced, this bill was identical to H949, as introduced by Rep. Brubaker, which is currently in House Banking, if favorable, Finance.]

CURRENT LAW: Under the S.A.F.E Mortgage Licensing Act, mortgage lenders, mortgage brokers, mortgage servicers, and loan originators are required to be licensed by the Commissioner of Banks before engaging in the businesses of mortgage lending, mortgage brokering, or mortgage servicing, unless exempt.

Mortgage brokers, mortgage lenders, and mortgage servicers, must pay a license application fee of $1,250.00. Mortgage loan originators must pay a fee of $125.00. The licensee must also pay a filing fee for each additional branch office of $300.00. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.

Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625.00, together with a $300.00 fee for each branch office. The renewal fee for mortgage loan originators is $125.00. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250.00 and for mortgage loan originators is $100.00.

BILL ANALYSIS: SB 806 would create a new funding mechanism for mortgage regulation by replacing the licensing fees for mortgage companies with an assessment. The assessment would include a minimum level of $2,000 plus an additional amount based on loan and servicing volume. The draft includes a table setting out the amount per thousand dollars to be applied to various brackets of loan and servicing volume.

The draft also repeals the renewal fees currently paid by lenders, brokers, and servicers.

EFFECTIVE DATE: This act would become effective October 1, 2012.

BACKGROUND: The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws made the following finding: "The fees generated by the S.A.F.E. Mortgage Licensing Act are insufficient to support the cost of regulating the mortgage lending industry. Since 2002, bank assessments have subsidized mortgage regulation. The funding mechanism for mortgage regulation should be changed to replace the current licensing renewal fees with an assessment structure similar to that currently applicable to banks."

PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 5-24 TIME: 10 AM

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

	Page Name	Hometown	Sponsoring Senator
1	Jamie Byrum	Wilson	Newton
2	Jackson Hooks	Wilson	Newton
3	Jane Albrecht	Amad, Maryland	Purcell
4	Kelsey Cagle	Belmont	Harrington
5	Christina Lee	Four Oaks	~~[illegible]~~ P. Berger
6	Braxton Becoats	Durham	McKissick
7			
8			
9			
10			

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
George Smith	Williams Mullen
Lauren Whalin	NCCUL
David Ferrell	NCLTA
Doug Lassiter	NCSTA
Chris Barrett	NCMS
Cody Thomas	NCAR
Matt Wolfe	PPAB
Vince Thompson	PPAB
Amanda Dixon	Sen. Hise
Shelly Carver	Sen. Hise
Chad Rhoades	NCDACS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Billy Bryan	OAH/RRC
BILL BOST	CMA
Robin Smith	DENR
Clare FitzGerald	DENR
Jake Cashion	NC Chamber
Matt Matthews	DENR/DWQ
Keith Larick	"
JOE DELUCA	OAH - RRC
John Patterson	NCAOR
Michael R Thompson	Dominion NC Power
Whitney Christensen	NCRLA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Betsy Bailey	PFNC
Chris Kelly	CCL
Derek Rene	DHHS.
Beatrice Williams	CUCA
Dave Sinopoli	CAUC
DAVID BARNES	PS
Kevin Redmond	NCACC.
Erin Wynia	NCLM
David Heinen	NC Center for Nonprofits
Ashleigh Thornton	MWC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gill Frazier	NCDACS
Tim Kent	NC Beer & Wine
Henry Jones	Jordan Price
Caitlan Hart	The Longmire Group
Reggie Holley	The Longmire Group
Angie Maier	NCPC

SENATE COMMERCE COMMITTEE
Thursday, May 31, 2012 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on May 31, 2012, in Room 1027 of the Legislative Building. Twenty-eight members of the committee were present. Jaelyn Harvey of Fayetteville, Mallory Lowe of Trinity, Leanne Gosey of Mooresboro, Travis Gillespie of Aberdeen, and Tyler Coe of Denton served as pages. Senator Brown and Senator Gunn presided.

SB 808 – Changes to Commerce Reporting Requirements

Senator Brown was recognized to explain the bill which makes several changes to the reporting requirements of the Department of Commerce and the Economic Development Board. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

SB 820 – Clean Energy and Economic Security Act

Senator Rucho was recognized to explain the bill. Senator Newton moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would 1) direct various State agencies to develop a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose; 2) amend several statutes that currently prohibit the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes; but prohibit issuance of permits for these activities until such time as the General Assembly takes legislative action to allow issuance of such permits; and 3) enact various other provisions related to management of oil and gas exploration and development activities. Jeff Hudson and Jennifer McGuiness, staff attorneys with the Research Division, were recognized to explain the bill section by section and to answer any questions. No vote was taken on the bill. A copy of the PCS and the summary is attached.

HB 177 – Clean Energy Transportation Act

Senator Rucho was recognized to explain the bill. Senator Newton moved to adopt the PCS for discussion. The PCS would 1) direct the Department of Public Instruction to purchase new school buses that operate on compressed natural gas (CNG); 2) direct the Department of Transportation to purchase new ¾ ton and ½ ton pick-up trucks that operate on CNG or CNG and gasoline; 3) create an interagency task force to establish public-private partnerships for the construction and development of CNG fueling infrastructure; 4) establish criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways; 5) amend the Energy Jobs Act of 2011 should it become law; and 6) amend the production tax credit for renewable fuel facilities. Jeff Hudson and Jennifer McGuiness were recognized to explain the bill

section by section and to answer any questions. No vote was taken on the bill. A copy of the PCS and the summary is attached.

The meeting adjourned at noon.

Senator Harry Brown, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk
Reading Clerk

Corrected: SJR 817 - Confirm Tamara Nance to Industrial Commission has been removed from the agenda.
H177 - Environmental Technical Corrections 2011 has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 31, 2012	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 177	Environmental Technical Corrections 2011.	Representative McElraft Representative Samuelson
SB 808	Changes to Commerce Reporting Requirements.	Senator Brown
SB 820	Clean Energy and Economic Security Act.	Senator Blake Senator Walters Senator Rucho

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

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SJR 817	Confirm Tamara Nance to Industrial Comm.	Senator Brown
SB 820	Clean Energy and Economic Security Act.	Senator Blake Senator Walters Senator Rucho

Senator Harry Brown, Chair

Senate Commerce Committee
Thursday, May 31, 2012, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 177	Environmental Technical Corrections 2011.	Rep. McElraft Rep. Samuelson
SB 808	Changes to Commerce Reporting Requirements.	Sen. Brown
SB 820	Clean Energy and Economic Security Act.	Sen. Blake Sen. Walters Sen. Rucho

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

COMMERCE COMMITTEE REPORT

Senator Harry Brown, Chair

Thursday, May 31, 2012

Senator BROWN,

submits the following with recommendations as to passage:

FAVORABLE

S.B. **808** Changes to Commerce Reporting Requirements.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Brown

SENATE BILL 808*
Corrected Copy 5/22/12

Short Title:	Changes to Commerce Reporting Requirements.	(Public)
Sponsors:	Senators Brown; Gunn, Hunt, Jackson, McKissick, Meredith, Newton, Rucho, Stein, Tillman, Tucker, and Vaughan.	
Referred to:	Commerce.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE REQUIREMENTS OF THE COMPREHENSIVE STRATEGIC ECONOMIC DEVELOPMENT PLAN AND TO SIMPLIFY AND STREAMLINE OTHER REPORTING REQUIREMENTS FOR THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-434.01 reads as rewritten:

"**§ 143B-434.01. Comprehensive Strategic Economic Development Plan.**

...

(e) Environmental Scan. – The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the Board shall gather the following ~~information. Thereafter, the information shall be updated periodically.~~ information and ensure that the information is updated periodically. The updated information may be provided in whatever format and through whatever means is most efficient.

...

(f) ~~Needs Assessment. The Board, using data from the public input sessions and the environmental scan, shall prepare an assessment of economic development strengths, weaknesses, threats, and opportunities within the State by Region and by county. An assessment shall also be conducted of each county to determine distressed areas existing within the county. The assessment will include the identification of key development issues within each geographic area and options available to address each issue.~~

...

(k) Annual ~~Report.~~ Evaluation. – ~~The Plan shall contain a section devoted to measuring results, to be called "An Annual Report on Economic Development for the State of North Carolina". The Annual Report shall contain a comparison of actual results with~~ The Board shall annually evaluate the State's economic performance based upon the statistics listed in this subsection and upon the Board's stated goals and objectives in its Plan. ~~and significant and meaningful statistics to allow policymakers to adjust strategy and tactics as necessary to achieve the formulated goals.~~ The statistics upon which the evaluation is made should be available to policymakers. The information may be provided in whatever format and through whatever means is most efficient.

~~The Annual Report shall break down data by Regions and counties including:~~

...

~~(9) An evaluation of the State's economic performance as indicated by the above statistics with the goals and objectives outlined in the Plan.~~

(l) Accountability. – The Board shall make all data, plans, and reports available to the General ~~Assembly and~~Assembly, the Joint Legislative Commission on Governmental ~~Operations~~ Operations, and the Joint Legislative Economic Development and Global Engagement Oversight Committee at appropriate times and upon request. The Board shall prepare and make available on an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective."

SECTION 2. G.S. 143B-435.1 reads as rewritten:

"**§ 143B-435.1. Clawbacks.**

...

(d) Report. – ~~The~~ By April 1 and October 1 of each year, the Department of Commerce shall report to the Revenue Laws Study ~~Committee by April 1 and October 1 of each year~~ Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on all clawbacks that have been triggered under programs it administers and its progress on obtaining repayments. The report must include the name of each business, the event that triggered the clawback, and the amount forfeited or to be repaid."

SECTION 3. G.S. 143B-437.01(c) is repealed.

SECTION 4. G.S. 143B-437.07 reads as rewritten:

"**§ 143B-437.07. Economic development grant reporting.**

(a) Report. – The Department of Commerce must publish on or before ~~March~~ October 1 of each year the information required by this subsection, itemized by business entity, for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the previous ~~five calendar years. The Department must provide the General Assembly with updated supplemental information consistent with this subsection on a quarterly basis in the form and manner requested by the General Assembly.~~ fiscal year. The information in the report must include all of the following:

...

(b) Online ~~Posting.~~Posting/Written Submission. – The Department of Commerce must post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report must include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section. By October 1 of each year, the Department of Commerce must submit the written report required by subsection (a) of this section to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Revenue Laws Study Committee, and the Fiscal Research Division of the General Assembly.

(c) Economic Development Incentive. – An economic development incentive includes any grant ~~program administered by the Department of Commerce that disburses or awards monies to businesses. Examples of these grant programs include the~~ from the following programs: Job Development Investment Grant ~~Program,~~Programs; the Job Maintenance and Capital Development ~~Fund,~~Fund; One North Carolina ~~Fund,~~Fund; and the Industrial Development Fund, including the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue must report annually on these statutory economic development incentives, as required under G.S. 105-256."

SECTION 5. G.S. 143B-437.08 reads as rewritten:

"**§ 143B-437.08. Development tier designation.**

...

(k) Report. – By November 30 of each year, the Secretary of Commerce shall submit a written report to the Joint Legislative Commission on Governmental Operations and the Fiscal

Research Division on the tier rankings required by subsection (c) of this section, including a map of the State whereupon the tier ranking of each county is designated."

SECTION 6. G.S. 143B-437.55(d) is repealed.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 808:
Changes to Commerce Reporting Requirements

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 31, 2012
Introduced by:	Sen. Brown	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 808 makes several changes to the reporting requirements of the Department of Commerce and the Economic Development Board.

[As introduced, this bill was identical to H1017, as introduced by Reps. Dockham, McGee, which is currently in House Commerce and Job Development.]

BILL ANALYSIS: The Comprehensive Strategic Economic Development Plan prepared by the Economic Development Board contains specific reporting requirements. The language has not changed substantively since the General Assembly enacted it in 1993. However, since 1993, much of the date required to be compiled and published by the Board is readily available through other means such as "AccessNC", "NC Today", "Economic Index", "Demand Driven Data System", and other monthly reports. To remove duplicity from the process, Section 1 of the bill removes some of the reporting requirements of the Board. It does not eliminate the need for the information, but recognizes that it may be available through other means than a formal report compiled by the Board.

Sections 2 and 5 add the Joint Legislative Commission on Governmental Operations and Fiscal Research to the list of entities to whom Commerce should forward its bi-annual report on claw-backs and its annual report on development tier designations.

Sections 3 and 6 remove duplicative reporting requirements.

Section 4 makes changes to the Economic Development Grant report. The Secretary of Commerce suggested these changes to the Joint Legislative Economic Development and Global Engagement Oversight Committee. It changes the reporting date from March 1 to October 1. It removes the quarterly reporting requirement because the report changes little from quarter to quarter. It lists various legislative committees to whom Commerce must submit its written report. And lastly is specifies the programs that much be included in the report.

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

S808-SMTD-115(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 820
PROPOSED COMMITTEE SUBSTITUTE S820-CSRI-44 [v.13]

5/30/2012 5:36:11 PM

Short Title: Clean Energy and Economic Security Act. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO: (1) RECONSTITUTE THE MINING COMMISSION AS THE MINING AND ENERGY COMMISSION, (2) REQUIRE THE MINING AND ENERGY COMMISSION AND OTHER REGULATORY AGENCIES TO DEVELOP A MODERN REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE, (3) AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC FRACTURING, BUT PROHIBIT THE ISSUANCE OF PERMITS FOR THESE ACTIVITIES PENDING SUBSEQUENT LEGISLATIVE ACTION, (4) LIMIT LOCAL GOVERNMENT REGULATION OF OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES, (5) ENHANCE LANDOWNER AND PUBLIC PROTECTIONS RELATED TO HORIZONTAL DRILLING AND HYDRAULIC FRACTURING, AND (6) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY.

PART I. LEGISLATIVE FINDINGS AND INTENT

Whereas, in S.L. 2011-276, the General Assembly directed the Department of Environment and Natural Resources, in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose, including the study of all of the following:

(1) Oil and gas resources present in the Triassic Basins and in any other areas of the State.

(2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

(3) Potential environmental, economic, and social impacts arising from such activities, as well as impacts on infrastructure.

(4) Appropriate regulatory requirements for management of oil and gas exploration activities, with particular attention to regulation of horizontal drilling and hydraulic fracturing for that purpose; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources, in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), issued a draft report in March of 2012; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources received public comment regarding the draft report, including public comment received at public meetings held on March 20, March 27, and April 2, 2012; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources (DENR), in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), issued a final report on April 30, 2012; and

Whereas, the final report set forth a number of recommendations, including recommendations concerning all of the following:

(1) Development of a modern oil and gas regulatory program, taking into consideration the processes involved in hydraulic fracturing and horizontal drilling technologies, and long-term prevention of physical or economic waste in developing oil and gas resources.

(2) Collection of baseline data for areas near proposed drill sites concerning air quality and emissions, as well as groundwater and surface water resources and quality.

(3) Requirements that oil and gas operators prepare and have approved water management plans that limit water withdrawals during times of low-flow conditions and droughts.

(4) Enhancements to existing oil and gas well construction standards to address the additional pressures of horizontal drilling and hydraulic fracturing.

(5) Development of setback requirements and identification of areas where oil and gas exploration and development activities should be prohibited.

(6) Development of a State stormwater regulatory program for oil and gas drilling sites.

(7) Development of specific standards for management of oil and gas wastes.

(8) Requirements for disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies and the public.

(9) Prohibitions on use of certain chemicals or constituents in hydraulic fracturing fluids.

(10) Improvements to data management capabilities.

(11) Development of a coordinated permitting program for oil and gas exploration and development activities within the Department of Environment and Natural Resources where it will benefit from the expertise of State geological staff and the ability to coordinate air, land, and water permitting.

(12) Development of protocols to ensure that State agencies, local first responders, and industry are prepared to respond to a well blowout, chemical spill, or other emergency.

(13) Adequate funding for any continued work on the development of a State regulatory program for the natural gas industry.

(14) Appropriate distribution of revenues from any taxes or fees that may be imposed on oil and gas exploration and development activities to support a modern regulatory program for the management of all aspects of oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State, and to support local governments impacted by the activities, including, but not limited to, sufficient funding for improvements to and repair of roads subject to damage by truck traffic and heavy equipment from these activities.

(15) Closure of gaps in regulatory authority over the siting, construction, and operation of gathering pipelines.

(16) Clarifications needed to address local government regulatory authority over oil and gas exploration and development activities, and use of horizontal drilling and hydraulic fracturing for that purpose.

(17) Additional research required on impacts to local governments and local infrastructure, as well as potential economic impacts from oil and gas exploration and development activities.

(18) Development of provisions to address liability of the oil and gas industry for environmental contamination caused by exploration and development activities, particularly with regard to groundwater contamination.

(19) Establishment of a process that affords additional public participation in connection with development of a modern oil and gas regulatory program; and

Whereas, the final report also states "[a]fter reviewing other studies and experiences in oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as long as the right protections are in place. It will be important to have those measures in place before issuing permits for hydraulic fracturing in North Carolina's shale formations."; and

Whereas, the General Assembly concurs in the conclusion of the final report that hydraulic fracturing can be done safely as long as the right protective measures are in place before any permits for horizontal drilling and hydraulic fracturing are issued; and

Whereas, it is the intent of the General Assembly to authorize oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing, but to prohibit the issuance of permits for these activities until such time as the General Assembly has determined that a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose has been fully established and takes legislative action to allow the issuance of permits; and

Whereas, it is the intent of the General Assembly to establish a modern regulatory program based on the recommendations of the final report and the following principles:

(1) Protection of public health and safety.

(2) Protection of public and private property.

(3) Protection and conservation of the State's air, water, and other natural resources.

(4) Promotion of economic development and expanded employment opportunities.

(5) Productive and efficient development of the State's oil and gas resources;

Now, therefore,

The General Assembly of North Carolina enacts:

PART II. RECONSTITUTE THE MINING COMMISSION AS THE MINING AND ENERGY COMMISSION; RENAME THE DIVISION OF LAND RESOURCES AS THE DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES

SECTION 1.(a) Part 6 of Article 7 of Chapter 143B of the General Statutes is repealed.

SECTION 1.(b) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:.

"Part 6A. North Carolina Mining and Energy Commission.

"**§ 143B-293.1 North Carolina Mining and Energy Commission – creation; powers and duties.**

(a) There is hereby created the North Carolina Mining and Energy Commission of the Department of Environment and Natural Resources with the power and duty to adopt rules for the development of the oil, gas, and mining resources of the State.

(1) The North Carolina Mining and Energy Commission shall have the following powers and duties:

a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.

b. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.

c. To adopt rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.

d. To adopt rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

e. To adopt rules necessary to administer the Oil and Gas Conservation Act, pursuant to G.S. 113-391.

(2) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(b) To Commission shall have the authority to hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department under the Oil and Gas Conservation Act, Article 27 of Chapter 113 of the General Statutes. The Commission shall also have the authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to: (i) regulate the spacing of wells and to establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells with efficient gas-oil ratios, and to fix such ratios; (iii) limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; and (iv) require integration of interests as provided in G.S. 113-393.

(c) The Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission. The Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Joint Legislative Commission on Energy Policy and the Environmental Review Commission. The Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

"**§ 143B-293.2 North Carolina Mining and Energy Commission – members; selection; removal; compensation; quorum; services.**

(a) Members, Selection. – The North Carolina Mining and Energy Commission shall consist of fourteen members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designees, nonvoting ex officio.

(2) The State Geologist, or the State Geologist's designee, nonvoting ex officio.

(3) The Assistant Secretary of Energy for the Department of Commerce, or the Assistant Secretary's designee, nonvoting ex officio.

(4) The Chair of the Environmental Management Commission, or the Chair's designees, nonvoting ex officio.
(5) The Chair of the Commission for Public Health, or the Chair's designees, nonvoting ex officio.
(6) One appointed by the Governor who is a representative of the mining industry.
(7) One appointed by the Governor who is a representative of the mining industry.
(8) One appointed by the Governor with experience in oil and gas exploration, production, or development.
(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate with experience in environmental conservation or mitigation.
(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate with experience in oil and gas exploration, production, or development.
(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate with interest in mineral, oil, and gas exploration, production, or development.
(12) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives with experience in environmental conservation or mitigation.
(13) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives with experience in oil and gas exploration, production, or development.
(14) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives with interest in mineral, oil, and gas exploration, production, or development.

(b) Terms. – The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. The term of members appointed under subdivisions (6), (9), and (12) of subsection (a) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (7), (10), and (13) of subsection (a) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (8), (11), and (14) of subsection (a) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three.

(c) Vacancies; Removal from Office. –
(1) Any appointment by the Governor to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commissioner from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.
(2) Members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of Article VI of the North Carolina Constitution, a member may continue to serve until a successor is duly appointed.

(d) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(f) Staff. – All staff support required by the Commission shall be supplied by the Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

"**§ 143B-293.4 North Carolina Mining and Energy Commission – officers.**

The Mining and Energy Commission shall have a chair and a vice-chair. The Commission shall elect one of its members to serve as Chair, and one of its members to serve as Vice-Chair. The Chair and Vice-Chair shall serve one-year terms beginning August 1 and ending July 31 of the following year. The Chair and Vice-Chair may serve any number of terms, but not more than two terms consecutively.

"**§ 143B-293.5 North Carolina Mining and Energy Commission – meetings.**

The North Carolina Mining and Energy Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least nine members.

"**§ 143B-293.6 North Carolina Mining and Energy Commission – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Mining and Energy Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes.

(b) In the evaluation of each violation, the Commission shall recognize that harm to the natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.

(2) The duration and gravity of the violation.

(3) The effect on ground or surface water quantity or quality or on air quality.

(4) The cost of rectifying the damage.

(5) The amount of money saved by noncompliance.

(6) Whether the violation was committed willfully or intentionally.

(7) The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.

(8) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Commission on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary or the Secretary's designee and all of the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and

when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final decision by the administrative law judge in accordance with G.S. 150B-34 or court order has been served on the violator, the Secretary or the Secretary's designee shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) For purposes of this section, "Secretary" shall mean the Secretary of Environment and Natural Resources."

SECTION 1.(c) Pursuant to G.S. 150B-21.7, rules adopted by the North Carolina Mining Commission shall remain in effect until amended or repealed by the North Carolina Mining and Energy Commission established pursuant to subsection (b) of this section.

SECTION 1.(d) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the North Carolina Mining and Energy Commission as provided in subsection (b) of this section. The Codifier of Rules shall make the conforming rule changes necessary to reflect the reconstitution of the North Carolina Mining Commission to the North Carolina Mining and Energy Commission as provided in subsection (b) of this section.

SECTION 1.(e) The Division of Land Resources of the Department of Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and Land Resources.

SECTION 1.(f) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the renaming of the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as provided in subsection (e) of this section.

SECTION 1.(g) In order to maintain continuity and experience of membership, the Governor and the General Assembly should consider the members of the North Carolina Mining Commission, repealed pursuant to subsection (a) of this section, when appointing the members of the North Carolina Mining and Energy Commission, created by G.S. 143B-293.1, as enacted by subsection (b) of this section.

SECTION 1.(h) The North Carolina Mining and Energy Commission shall submit the first report due under G.S. 143B-293.1(c), as enacted by subsection (b) of this section, on or before January 1, 2013.

PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE

SECTION 2.(a) G.S. 113-380 reads as rewritten:

"**§ 113-380. Violation a misdemeanor.**

~~Any~~ Except as otherwise provided, any person, firm or officer of a corporation violating any of the provisions of ~~G.S. 113-378 or 113-379;~~this Article shall upon conviction thereof be guilty of a Class 1 misdemeanor."

SECTION 2.(b) G.S. 113-389 reads as rewritten:

"**§ 113-389. Definitions.**

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(1) "Commission" shall mean the North Carolina Mining and Energy Commission.

(1a) "Department" shall mean the ~~"Department~~Department of Environment and Natural ~~Resources," as created by this law.~~Resources.

(1b) "Division" shall mean the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources.

(2) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(3) "Gas" shall mean all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7).

(3a) "Hydraulic fracturing fluid" shall mean the base fluid type utilized in a particular hydraulic fracturing treatment.

(3b) "Hydraulic fracturing treatment" shall mean stimulating a well by the application of hydraulic fracturing fluids and additives with force in order to create artificial fractures in the formation for the purpose of improving the capacity to produce hydrocarbons.

..."

SECTION 2.(c) G.S. 113-391 reads as rewritten:

"**§ 113-391. Jurisdiction and authority; rules and orders.**

(a) The Mining and Energy Commission, created by G.S. 143B-293.1, shall establish a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose. The program shall be designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. To establish the program, the Commission shall adopt rules for all of the following purposes:

(1) Regulation of pre-drilling exploration activities, including seismic and other geophysical and stratigraphic surveys and testing.

(2) Regulation of drilling, operation, casing plugging, completion, and abandonment of wells.

(3) Prevention of pollution of water supplies by oil, gas, or other fluids used in oil and gas exploration and development.

(4) Protection of the quality of the water, air, soil, or any other environmental resource against injury or damage or impairment.

(5) Regulation of the processes of horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration. Such rules shall, at a minimum, include standards or requirements related to the following:

a. Information and data to be submitted in association with applications for permits to conduct oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing, which may include submission of hydrogeological investigations and identification of mechanisms to prevent and diagnose sources of groundwater contamination in the area of drilling sites. In formulating these requirements, the Commission shall consider: (i) how North Carolina's geology differs from other states where oil and gas exploration and development activities using the

processes of horizontal drilling and hydraulic fracturing are common, and (ii) the routes of possible groundwater contamination resulting from these activities and the potential role of vertical geological structures such as dikes and faults as conduits for groundwater contamination.

b. Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed.

c. Appropriate well construction standards, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters. Such standards shall address the additional pressures of horizontal drilling and hydraulic fracturing, such as standards for casing and cementing sufficient to handle highly pressurized injection of fluids into a well for purposes of fracturing bedrock and extraction of gas, and construction standards for other gas production infrastructure, such as storage pits and tanks.

d. Appropriate siting standards for wells and other gas production infrastructure, such as storage pits and tanks, including appropriate setback requirements and identification of areas, such as floodplains, where oil and gas exploration and production activities should be prohibited, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters.

e. Limits on water use, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters. Such rules shall be developed in light of water supply in the areas of proposed activity, competing water uses in those areas, and expected environmental impacts from such water withdrawals, including, but not limited to, a requirement that oil and gas operators prepare and have a water and wastewater management plan approved by the Department, which, among other things, limits water withdrawals during times of drought and periods of low flows.

f. Stormwater control at sites, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters.

g. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing for that purpose, as may be appropriate relative to responsibilities of the Commission for Public Health for such matters. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics, that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act, such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells.

h. Regulation of toxic air emissions from drilling operations, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters.. In formulating appropriate standards, the Department shall assess emissions from oil

and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies, including emissions from associated truck traffic in order to (i) determine the adequacy of the State's current air toxics program to protect landowners who lease their property to drilling operations, and (ii) determine the impact on ozone levels in the area in order to determine measures needed to maintain compliance with federal ozone standards.

i. Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, particularly diesel fuel.

j. Full disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies, and, with the exception of those items constituting trade secrets, requirements for disclosure of hydraulic fracturing chemicals and constituents to the public.

k. Installation of appropriate safety devices, and development of protocols for response to well blowouts, chemical spills, and other emergencies, including requirements for approved emergency response plans and certified personnel to implement these plans as needed.

l. Measures to mitigate impacts on infrastructure, including damage to roads by truck traffic and heavy equipment, in areas where oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies are proposed to occur.

m. Notice, record keeping, and reporting.

n. Proper well closure, site reclamation, post-closure monitoring, and financial assurance.

(7) To require surveys upon application of any owner who has reason to believe that a well has been unlawfully drilled by another into land of the owner without permission. In the event such surveys are required, the costs thereof shall be borne by the owner making the request.

(8) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records.

(9) To prevent "blow-outs," "caving," and "seepage," as such terms are generally understood in the oil and gas industry.

(10) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities.

(11) To regulate the "shooting," perforating, and chemical treatment of wells.

(12) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations.

(13) To regulate the spacing of wells and to establish drilling units.

(14) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil, or any other environmental resource against injury, damage, or impairment.

(15) Any other matter the Commission deems necessary for implementation of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose.

(a1) In addition to the matters for which the Commission is required to adopt rules pursuant to subsection (a) of this section, the Commission may adopt rules as it deems necessary for any of the following purposes:

(1) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(2) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this Article and rules adopted thereunder.

(3) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(4) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(a2) The Department shall ~~have jurisdiction and authority of and over all persons and property necessary to~~ administer and enforce ~~effectively~~ the provisions of this ~~law~~ Article, and rules adopted thereunder, and all other laws relating to the conservation of oil and ~~gas.~~gas, except for jurisdiction and authority reserved to the Department of Labor and the Mining and Energy Commission, as otherwise provided. The Commission and the Department may issue orders as may be necessary from time to time in the proper administration and enforcement of this Article and rules adopted thereunder.

(b) The Commission and the ~~Department~~ Department, as appropriate, shall have the authority and it shall be ~~its~~ their duty to make such inquiries as ~~it~~ may ~~think~~ be proper to ~~determine whether or not waste over which it has jurisdiction exists or is imminent.~~implement the provisions of this Article. In the exercise of such power the Commission and the ~~Department~~ Department, as appropriate, shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

(b1) In the exercise of their respective authority over oil and gas exploration and development activities, the Commission and the Department, as applicable, shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public. The State Geologist shall serve as the custodian of all data, information, and records received by the Department pursuant to this subsection and shall ensure that the information is maintained securely as provided in G.S. 132-7.

~~(c) The Department may make rules and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules or orders for the following purposes:~~

~~(1) To require the drilling, operation, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or salt water, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.~~

~~(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such~~

~~surveys are required, the costs thereof shall be borne by the owners making the request.~~

~~(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.~~

~~(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.~~

~~(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.~~

~~(6) To prevent "blow outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.~~

~~(7) To prevent fires.~~

~~(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.~~

~~(9) To regulate the "shooting," perforating, and chemical treatment of wells.~~

~~(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.~~

~~(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.~~

~~(12) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.~~

~~(13) To regulate the spacing of wells and to establish drilling units.~~

~~(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.~~

~~(15) To prevent where necessary the use of gas for the manufacture of carbon black.~~

~~(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment.~~

(d) The Department of Labor shall develop, adopt, and enforce rules establishing health and safety standards for workers engaged in oil and gas operations in the State, including operations in which hydraulic fracturing treatments are used for that purpose.

(e) The Department shall submit an annual report on its activities conducted pursuant to this Article and rules adopted thereunder to the Environmental Review Commission, the Joint Legislative Commission on Energy Policy the Senate and House of Representatives Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on or before October 1 of each year."

SECTION 2.(d) G.S. 113-392 reads as rewritten:

"**§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.**

(a) Whether or not the total production from a pool be limited or prorated, no rule or order of the ~~Department~~ Commission shall be such in terms or effect

(1) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or

(2) As to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

(b) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the Commission ~~Department~~ shall, after a hearing, establish a drilling unit or units for each pool. The Commission ~~Department~~ may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the Commission ~~Department~~ may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may reasonably be necessary where it is shown, after notice and upon hearing, and the Commission ~~Department~~ finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the Commission ~~Department~~ shall take such action as will offset any advantage which the person securing the exception may have over producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(d) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be ascertained practically; and to that end, the rules, permits and orders of the Commission ~~Department~~ shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir energy."

SECTION 2.(e) G.S. 113-394 reads as rewritten:

"**§ 113-394. Limitations on production; allocating and prorating "allowables."**

(a) Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the ~~Department~~ Commission shall limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this State. The Commission ~~Department~~ shall then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the ~~Department~~ Commission shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and

condensate, and shall formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and shall distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the ~~Department~~ Commission shall ~~permit~~ allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the ~~Department~~ Commission shall fix the "allowable" for the pool so that waste will be prevented.

(b) The Commission ~~Department~~ shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State. In allocating "allowables" to pools, the ~~Department~~ Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission ~~Department~~ shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the ~~Department~~ Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the ~~Department~~ Commission shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the Commission ~~Department~~ shall limit the total amount of gas which may be produced from such pool. The Commission ~~Department~~ shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the ~~Department~~ Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized."

SECTION 2.(f) G.S. 113-410 reads as rewritten:

"**§ 113-410. Penalties for other violations.**

Any person who fails to secure a permit prior to drilling a well or using hydraulic fracturing treatments, or who knowingly and willfully violates any provision of this ~~law;~~Article, or any rule or order of the Department made hereunder, shall, in the event a penalty for such violation

is not otherwise provided for herein, be subject to a penalty of not to exceed ~~one~~ twenty-five thousand dollars ~~($1,000)~~($25,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Department, and such suit, by direction of the Department, shall be instituted and conducted in the name of the Department by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provisions of this law, or any rule or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2.(g) G.S. 113-415 reads as rewritten:

"**§ 113-415. Effect on laws applicable to water and air pollution control, and management of solid and hazardous waste.~~Conflicting laws.~~**

No provision of this Article shall be construed to abridge or otherwise affect the authority and responsibility vested in the Environmental Management Commission related to the control of water and air pollution as provided in in Articles 21 and 21A of Chapter 143 of the General Statutes, or the authority and responsibility vested in the Commission for Public Health related to the management of solid and hazardous waste as provided in in Article 9 of Chapter 130A of the General Statutes.~~repeal, amend, abridge or otherwise affect the authority and responsibility vested in the Environmental Management Commission by Article 7 of Chapter 87, pertaining to the location, construction, repair, operation and abandonment of wells, or the authority or responsibility vested in the Department and the Commission for Public Health by Article 10 of Chapter 130A of the General Statutes pertaining to public water supply requirements.~~"

SECTION 2.(h) G.S. 143B-282 reads as rewritten:

"**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

...

"(2) The Environmental Management Commission shall adopt rules:

...

(l) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

..."

SECTION 2.(i) G.S. 130A-29 reads as rewritten:

"**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

...

(c) The Commission shall adopt rules:

...

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

..."

SECTION 2.(j) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources, the Department of Transportation, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, shall identify appropriate levels of funding and potential sources for that funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local governments impacted by the industry and associated activities; (ii) address expected infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic and heavy equipment; (iii) cover any costs to the State for administering an oil and gas regulatory program, including remediation and reclamation of drilling sites when necessary due to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any other issues that may need to be addressed in the Commission's determination. Any recommendation concerning local impact fees, shall be formulated to require that all such fees be used exclusively to address infrastructure impacts from the drilling operation for which a fee is imposed. The Commission shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 7.(a) of this act, and the Environmental Review Commission or before January 1, 2013.

SECTION 2.(k) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources and the Consumer Protection Division of the North Carolina Department of Justice, shall study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter. The Department shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 7.(a) of this act, and the Environmental Review Commission on or before January 1, 2013.

SECTION 2.(l) All rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health pursuant to this act shall be adopted no later than October 1, 2014. In order to provide for the orderly, efficient, and effective development and adoption of rules and to prevent the adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the Department of Environment and Natural Resources shall coordinate the adoption of the rules. The Commissions and the Department shall develop the rules in an open and collaborative process that includes (i) input from scientific and technical advisory groups, (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of Transportation, the Division of Emergency Management of the Department of Public Safety, the Consumer Protection Division of the Department of Justice, the Department of Labor, the Department of Health and Human Services, the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the Rural Advancement Foundation (RAFI-USA), and (iii) broad public participation. During the development of the rules, the Commissions and the Department shall identify changes required to all existing rules and statutes necessary for the implementation of this act, including repeal or modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this act, the Department shall submit quarterly reports to the Joint Legislative Commission on Energy Policy, created under Section 7.(a) of this act, and the Environmental Review Commission on progress in developing and adopting the rules. The quarterly reports shall include recommendations on changes required to existing rules and statutes and any other findings or recommendations necessary for the implementation of this act. The first report required by this subsection is due January 1, 2013.

SECTION 2.(m) Notwithstanding G.S. 143B-293.5, as enacted by Section 1.(b) of this act, the North Carolina Mining and Energy Commission shall meet at least twice quarterly until December 31, 2015, in order to develop a modern regulatory program for the management

of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.

PART IV. AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC FRACTURING; PROHIBIT ISSUANCE OF PERMITS PENDING SUBSEQUENT LEGISLATIVE ACTION

SECTION 3.(a) G.S. 113-393 reads as rewritten:

"**§ 113-393. Development of lands as drilling unit by agreement or order of ~~Department.~~Commission.**

(a) Integration of Interests and Shares in Drilling Unit. – When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the ~~Department~~ Commission shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the ~~Department~~ Commission has received no protest thereto, or request for hearing thereon, whether or not 10 days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the ~~Department~~ Commission to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production; with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the ~~Department~~ Commission shall determine the proper costs.

(b) When Each Owner May Drill. – Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the ~~Department~~ Commission is without authority to require integration as provided for in subsection (a) of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(c) Cooperative Development Not in Restraint of Trade. – Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the ~~Department,~~ Commission, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

(d) Variation from Vertical. – Whenever the Department fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the ~~Department~~ Commission shall prescribe rules and the Department shall prescribe orders governing the reasonableness of such variation. This subsection shall not apply to wells drilled for the purpose of exploration or development of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing treatments."

SECTION 3.(b) G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to ~~prohibit~~ prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with ~~G.S. 143-215.1A.~~ G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the exploration or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

SECTION 3.(c) G.S. 113-395 reads as rewritten:

"**§ 113-395. Permits, fees, and notice required for oil and gas activities.~~Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.~~**

(a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall ~~notify~~ submit an application for a permit to the Department upon such form as ~~it~~ the Department may prescribe and shall pay a fee of three thousand dollars ($3,000) for each well. The drilling of any well is ~~hereby~~ prohibited ~~until such notice is given and such fee has been paid and permit granted.~~ unless the Department has issued a permit for the activity.

(b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil and gas operations or activities shall submit an application for a permit to the Department upon such form as the Department may prescribe. The use of hydraulic fracturing treatments is prohibited unless the Department has issued a permit for the activity.

(c) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by rules prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty dollars ($450.00). No well shall be abandoned until such notice has been given and such fee has been paid."

SECTION 3.(d) The issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the

State pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other provision of law shall be prohibited in order to allow the Mining and Energy Commission to create a modern regulatory program to govern all aspects of such activities. No agency of the State, including the Department of Environment and Natural Resources, the Environmental Management Commission, the Commission on Public Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or development activities using the processes of horizontal drilling and hydraulic fracturing until the General Assembly takes legislative action to allow the issuance of such permits.

PART V. LIMIT LOCAL REGULATION

SECTION 4. Part 2 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-415A. Local ordinances prohibiting oil and gas exploration and development activities invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of oil and gas exploration and development activities by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including, but not limited to, those imposing taxes, any fees except as authorized by G.S. 113-388A, or charges or regulating health, environment, or land use, any local ordinance that prohibits or has the effect of prohibiting oil and gas exploration and development activities that the Mining and Energy Commission established under G.S. 143B-293.1 has preempted pursuant this section, shall be invalid to the extent necessary to effectuate the purposes of this Article. To this end, all provisions of special, local, or private acts or resolutions are repealed that do the following:

(1) Prohibit the siting of wells for oil and gas exploration and development within any county, city, or other political subdivision.

(2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose of oil or gas exploration or development within any county, city, or other political subdivision.

(3) Place any restriction or condition not placed by this Article upon oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(b) No special, local, or private act or resolution enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of this Article, unless it expressly provides for such by specific references to the appropriate section of this Article. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose within the jurisdiction of a local government are invalidated to the extent preempted by the Commission pursuant to this section.

(c) When oil and gas exploration and development activities would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the proposed activities may petition the Mining and Energy Commission to review the matter.

After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (d) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the proposed oil and gas exploration and development activities.

(d) When a petition described in subsection (c) of this section has been filed with the Mining and Energy Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission. The Commission shall give notice of the public hearing by both of the following means:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing.

(2) First class mail to persons who have requested notice. The Commission shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a postage-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Commission, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(e) Any interested person may appear before the Mining and Energy Commission at the hearing to offer testimony. In addition to testimony before the Commission, any interested person may submit written evidence to the Commission for the Commission's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Mining and Energy Commission makes a finding of fact to the contrary. The Commission shall determine whether or to what extent to preempt local ordinances so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would prohibit or have the effect of prohibiting oil and gas exploration and development activities, or use of horizontal drilling or hydraulic fracturing for that purpose.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the oil and gas exploration and development activities, and use of horizontal drilling or hydraulic fracturing for that purpose, will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(g) If the Mining and Energy Commission does not make all of the findings under subsection (f) of this section, the Commission shall not preempt the challenged local ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(h) The decision of the Mining and Energy Commission shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, all written material presented to the Commission regarding the location of the oil and gas exploration and development activities, the specific findings required by subsection (f) of this section, and any minority positions on the specific findings required by subsection (f) of this section. The scope of judicial review shall be that the court may affirm the decision of the Commission, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are any of the following:

(1) In violation of constitutional provisions.
(2) In excess of the statutory authority or jurisdiction of the Commission.
(3) Made upon unlawful procedure.
(4) Affected by other error of law.
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted.
(6) Arbitrary or capricious.

(i) If the court reverses or modifies the decision of the Mining and Energy Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(j) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

PART VI. LANDOWNER AND PUBLIC PROTECTIONS

SECTION 5.(a) G.S. 113-420 reads as rewritten:

"**§ 113-420. Notice and entry to property.**

(a) Notice Required for Activities That Do Not Disturb Surface of Property. – If an oil ~~and~~ or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil ~~and~~ or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil ~~and~~ or gas drilling operations, the developer or operator shall give written notice to the surface owner at least ~~seven~~ 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.
(2) The purpose for entry on the property.
(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) Notice Required for Land-Disturbing Activities. – If an oil ~~and~~ or gas developer or operator is not the surface owner of the property on which oil ~~and~~ or gas operations are to occur, before entering the property for oil ~~and~~ or gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least ~~14~~ 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes,

and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.

(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.

(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(c) Venue. – If the oil ~~and~~ or gas developer or operator fails to give notice or otherwise comply with the provisions of ~~as provided in~~ this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages."

SECTION 5.(b) G.S. 113-421 reads as rewritten:

"**§ 113-421. ~~Compensation for damages.~~Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.**

(a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or gas developer or operator is responsible for contamination of a private drinking water well or water supply well, as those terms are defined in G.S. 87-85, that is within 5,000 feet of a wellhead that is part of the oil or gas developer or operator's activities unless the presumption is rebutted by a defense established as set forth in subdivision (1) of this subsection. If a contaminated a private drinking water well or water supply well is located within 5,000 feet of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to the a private drinking water well or water supply well, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(1) In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

a. The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the private drinking water well or water supply well in question conducted in conformance with G.S. 113-423(e).

b. The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the private drinking water well or water supply well conducted in conformance with G.S. 113-423(e).

c. The private drinking water well or water supply well, as those terms are defined in G.S. 87-85, in question is not within 5,000 feet of a wellhead that is part of the oil or gas developer or operator's activities.

d. The contamination occurred as the result of a cause other than drilling activities of the developer or operator.

(a1) Compensation for Other Damages Required. – The oil ~~and~~ or gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

~~(1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.~~

(2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.

(3) Damage to any livestock, crops, or timber determined according to the market value of the resources destroyed, damaged, or prevented from reaching market due to the oil or gas developer's or operator's activities.

(a2) Reclamation of Surface Property Required. – An oil or gas developer or operator who is not the surface owner of the property on which oil or gas operations are to occur shall reclaim all surface areas affected by its operations no later than two years following completion of the operations. Prior to commencement of activities on the property, the oil or gas developer or operator shall provide a bond running to the surface owner sufficient to cover reclamation of the surface owner's property.

(b) Time Frame for Compensation. – When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) Venue. – The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid ~~royalties,~~royalties or other damages owed due to activities of the developer or operator, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

~~(d)~~ Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable."

SECTION 5.(c) G.S. 113-422 reads as rewritten:

"**§ 113-422. Indemnification.**

An oil or gas developer or operator shall indemnify and hold harmless a surface owner against any claims related to the developer's or operator's activities on the surface owner's property, including, but not limited to, (i) claims of injury or death to any person; (ii) ~~for~~ damage to impacted infrastructure or water supplies; (iii) damage to a third party's ~~property that is adjacent to property on which drilling occurs, as well as~~ real or personal property; ~~adjacent infrastructure, and wells.~~ and (iv) violations of any federal, State, or local law, rule, regulation, or ordinance, including those for protection of the environment."

SECTION 5.(d) G.S. 113-423 reads as rewritten:

"**§ 113-423. ~~Maximum~~ Required lease terms.**

(a) Required Information to be Provided to Potential Lessors. – Prior to executing a lease for oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property with a surface owner, an oil or gas developer or operator, or any agent thereof, shall provide that surface owner with a copy of this Part and a publication produced by the Consumer Protection Division of the North Carolina Department of Justice entitled "Oil & Gas Leases: Landowners' Rights."

(b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a

period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to extend a lease beyond the time frames set forth in this subsection.

(c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall provide that the owner of the surface property to which the lease pertains shall receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds of sale of all oil or gas produced from the surface owner's just and equitable share of the oil and gas in the pool, which sum may be diminished by production costs that shall not exceed ten percent (10%) of the of the proceeds of sale of all oil or gas produced from the surface owner's just and equitable share of the oil and gas in the pool. Production costs shall be limited to those associated with compression and dehydration. Royalty payments shall commence no later than six months after the date of first sale of product from the drilling operations subject to the lease and thereafter no later than 60 days after the end of the calendar month within which subsequent production is sold. At the time each royalty payment is made, the oil or gas developer or operator shall provide documentation on the time period for which the royalty payment is made, the quantity of product sold within that period, and the price received, at a minimum. If royalty payments have not been made within the required time frames, the owner of the property to which the lease pertains shall be entitled to interest on the unpaid royalties commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per annum on the unpaid amounts. Upon written request, the owner of the surface property to which the lease pertains shall be entitled to inspect and copy records of the oil or gas developer or operator related to production and royalty payments associated with the lease.

(d) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall clearly state whether the oil or gas developer or operator shall use groundwater or surface water supplies located on the property and, if so, shall clearly state the estimated amount of water to be withdrawn from the supplies on the property, and shall require permission of the landowner therefore. At a minimum, water used by the developer or operator shall not restrict the supply of water for domestic uses by the surface owner. The lease shall provide for full compensation to the landowner for water used from the property by the developer or operator in amount not less than the fair market value of the water consumed based on water sales in the area at the time of use.

(e) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to conduct a test of all private drinking water wells or water supply wells, as those terms are defined in G.S. 87-85, within 5,000 feet from a wellhead at least 30 days prior to initial drilling activities and at least two follow-up tests within a 24-month period after production has commenced. The Department shall identify the location of all such wells on a property on which drilling operations are proposed to occur. A surface owner may elect to have the Department sample wells located on their property, in lieu of sampling conducted by the oil or gas developer or operator, in which case the developer or operator shall reimburse the Department for the reasonable costs involved in testing of the wells in question. Nothing in this subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property.

(f) Recordation of Leases. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, including assignments of such leases, shall be recorded within 30 days of execution in the register of deeds office in the county that the land that is subject to the lease is located.

(g) Notice of Assignment Required. – Notice of assignment of any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be provided to the owner of the property to which the lease pertains within 30 days of such assignment."

SECTION 5.(e) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-423.1. Surface activities.**

(a) Agreements on Rights and Obligations of Parties. – The developer or operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the developer or operator.

(b) Minimization of Intrusion Required. – An oil or gas developer or operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator. The standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface. Failure of an oil or gas developer or operator to comply with the requirements of this subsection shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages and equitable relief. In any litigation or arbitration based upon this subsection, the surface owner shall present evidence that the developer or operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer or operator shall bear the burden of proof of showing that it minimized intrusion upon and damage to the surface of the land in accordance with the provisions of this subsection. If a developer or operator makes that showing, the surface owner may present rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has conducted oil or gas operations in accordance with a regulatory requirement, contractual obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection shall do any of the following:

(1) Preclude or impair any person from obtaining any and all other remedies allowed by law.

(2) Prevent a developer or operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract.

(3) Establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations."

SECTION 5.(f) G.S. 113-424 is repealed.

SECTION 5.(g) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-425. Registry of landmen required.**

(a) Establishment of Registry. – The Department of Environment and Natural Resources shall establish and maintain a registry of landmen operating in this State. As used in this section, "landman" means a person that, in the course and scope of the person's business, does any of the following:

(1) Acquires or manages oil, gas, or mineral interests.

(2) Performs title or contract functions related to the exploration, exploitation, or disposition of oil, gas, or mineral interests.

(3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights, including the acquisition or divestiture of land or oil, gas, or mineral rights for a pipeline.

(4) Negotiates business agreements that provide for the exploration for or development of oil, gas, or minerals.

(b) Registration Required. – A person may not act, offer to act, or hold oneself out as a landman in this State unless the person is registered with the Department in accordance with this section. To apply for registration as a landman, a person shall submit an application to the Department on a form to be provided by the Department, which shall include, at a minimum, all of the following information:

(1) The name of the applicant or, if the applicant is not an individual, the names and addresses of all principals of the applicant.

(2) The business address, telephone number, and electronic mail address of the applicant.

(3) The social security number of the applicant or, if the applicant is not an individual, the federal employer identification number of the applicant.

(4) A list of all states and other jurisdictions in which the applicant holds or has held a similar registration or license.

(5) A list of all states and other jurisdictions in which the applicant has had a similar registration or license suspended or revoked.

(6) A statement whether any pending judgments or tax liens exist against the applicant.

(c) The Department may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a registrant if the Department determines that the applicant or registrant does any of the following:

(1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.

(2) Uses or attempts to use an expired, suspended, or revoked registration.

(3) Falsely represents oneself as a registered landman.

(4) Engages in any other fraud, deception, misrepresentation, or knowing omission of material facts related to oil, gas, or mineral interests.

(5) Had a similar registration or license denied, suspended, or revoked in another state or jurisdiction.

(6) Otherwise violates this section.

(d) An applicant may challenge a denial, suspension, or revocation of a registration or a reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the General Statutes.

(e) The Department shall adopt rules as necessary to implement the provisions of this section."

SECTION 5.(h) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-426. Publication of information for landowners.**

In order to effect the pre-lease publication distribution requirement as set forth in G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the North Carolina Department of Justice, in consultation with the North Carolina Real Estate

Commission, shall develop and make available a publication entitled "Oil & Gas Leases: Landowners' Rights" to provide general information on consumer protection issues and landowner rights, including information on mineral leases, applicable to exploration and extraction of gas or oil. The Division and the Commission shall update the publication as necessary."

SECTION 5.(i) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-427. Additional remedies.**

The remedies provided by this Part are not exclusive and do not preclude any other remedies that may be allowed by law."

SECTION 6.(a) G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition.

(b1) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser an owners' association and mandatory covenants disclosure statement.

(1) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this subsection. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an

option to purchase where the lessee occupies or intends to occupy the dwelling. The standard disclosure statement shall require disclosure of whether or not the property to be conveyed is subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the property, including, but not limited to, obligations to pay regular assessments or dues and special assessments. The statement required by this subsection shall include information on all of the following:

a. The name, address, telephone number, or e-mail address for the president or manager of the association to which the lot is subject.
b. The amount of any regular assessments or dues to which the lot is subject.
c. Whether there are any services that are paid for by regular assessments or dues to which the lot is subject.
d. Whether, as of the date the disclosure is signed, there are any assessments, dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject.
e. Whether, as of the date the disclosure is signed, there are any unsatisfied judgments against or pending lawsuits involving the lot, the planned community or the association to which the lot is subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the lot to be sold.
f. Any fees charged by an association or management company to which the lot is subject in connection with the conveyance or transfer of the lot to a new owner.

(2) The owners' association and mandatory covenants disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics, or conditions or the owner is making no representations as to any characteristic or condition contained in the statement.

(b2) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser an oil, gas, and mineral rights mandatory disclosure statement as provided in this subsection.

(1) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this subsection. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement as set forth in G.S. 47E-2, except that the exemptions provided under subdivisions (9) and (11) of G.S. 47E-2 shall not apply to the disclosure requirement under this subsection. The standard disclosure statement shall require disclosure of the status of oil, gas, and mineral rights associated with the property to be conveyed, including (i) whether oil, gas, and mineral rights have been severed from rights to the surface of the real property by previous owners of the property; (ii) whether the owner has severed these rights; and (iii) whether it is the intention of the owner to sever these rights upon transfer of the property.

(2) The oil, gas, and mineral rights mandatory disclosure statement shall (i) provide the owner with the option to indicate whether the owner has actual knowledge of severance of oil, gas, and mineral rights by previous owners,

or the owner is making no representations as to severance of these rights by previous owners and, (ii) notwithstanding the provisions of subsection (c) of this section, require the owner to indicate whether they have severed these rights, or the owner intends to sever these rights at the time of transfer of the property.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement or the owners' association and mandatory covenants disclosure statement, as applicable, states that the owner makes no representations as to those conditions. Except as provided in subdivision (2) of subsection (b2) of this section, if~~If~~ the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them."

SECTION 6.(b) G.S. 47E-5 reads as rewritten:

"**§ 47E-5. Time for disclosure; cancellation of contract.**

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the disclosure statements required by this Chapter no later than the time the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement or the owners' association and mandatory covenants disclosure statement may be included in the real estate contract, in an addendum, or in a separate document. The oil, gas, and mineral rights mandatory disclosure statement shall be included in a separate document.

(b) If the disclosure statements required by this Chapter are not delivered to the purchaser prior to or at the time the purchaser makes an offer, the purchaser may cancel any resulting real estate contract. The purchaser's right to cancel shall expire if not exercised prior to the following, whichever occurs first:

(1) The end of the third calendar day following the purchaser's receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract in compliance with this subsection, the cancellation shall be without penalty to the purchaser, and the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

SECTION 6.(c) G.S. 47E-6 reads as rewritten:

"**§ 47E-6. Owner liability for disclosure of information provided by others.**

The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure ~~statement and~~statement, the owners' association and mandatory covenants disclosure ~~statement~~ statement, and the oil, gas, and mineral rights mandatory disclosure statement by a public agency or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any

information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it."

SECTION 6.(d) G.S. 47E-7 reads as rewritten:

"**§ 47E-7. Change in circumstances.**

If, subsequent to the owner's delivery of a residential property disclosure ~~statement and~~statement, the owners' association and mandatory covenants disclosure ~~statement~~ statement, and the oil, gas, and mineral rights mandatory disclosure statement to a purchaser, the owner discovers a material inaccuracy in a disclosure statement, or a disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement or statements to the purchaser. Failure to deliver a corrected disclosure statement or to make the repairs made necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted."

SECTION 6.(e) G.S. 47E-8 reads as rewritten:

"**§ 47E-8. Agent's duty.**

A real estate broker or salesman acting as an agent in a residential real estate transaction has the duty to inform each of the clients of the real estate broker or salesman of the client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure ~~statement or~~statement, an owners' association and mandatory covenants disclosure ~~statement.~~statement, or an oil, gas, and mineral rights mandatory disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes."

SECTION 6.(f) The North Carolina Real Estate Commission shall develop and make available the standard disclosure form required by G.S. 47E-4(b2), as enacted by Section 6.(a) of this act, by October 1, 2012.

PART VII. CREATE ENERGY POLICY OVERSIGHT COMMISSION

SECTION 7.(a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Joint Legislative Commission on Energy Policy.

"**§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

(a) The Joint Legislative Commission on Energy Policy is established.

(b) The Commission shall consist of 10 members as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate, at least one of whom is a member of the minority party.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, at least one of whom is a member of the minority party.

(c) Terms on the Commission are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. A member continues to serve until the member's successor is appointed.

"**§ 120-286. Purpose and powers and duties of Commission.**

(a) The Joint Legislative Commission on Energy Policy shall exercise legislative oversight over energy policy in the State. In the exercise of this oversight, the Commission may do any of the following:

(1) Monitor and evaluate the programs, policies, and actions of the Mining and Energy Commission established pursuant to G.S. 143B-293.1, the Energy Policy Council established pursuant to G.S. 113B-2, the Energy Division in the Department of Commerce, the Utilities Commission and Public Staff established pursuant to Chapter 62 of the General Statutes, and of any other board, commission, department, or agency of the State or local government with jurisdiction over energy policy in the State.

(2) Review and evaluate existing and proposed State statutes and rules affecting energy policy and determine whether any modification of these statutes or rules is in the public interest.

(3) Monitor changes in federal law and court decisions affecting energy policy.

(4) Monitor and evaluate energy-related industries in the State and study measures to promote these industries.

(5) Study any other matters related to energy policy that the Commission considers necessary to fulfill its mandate.

(b) The Commission may make reports and recommendations, including proposed legislation, to the General Assembly from time to time as to any matter relating to its oversight and the powers and duties set out in this section.

"**§ 120-287. Organization of Commission.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on Energy Policy. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session.

(b) A quorum of the Commission is six members.

(c) While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02.

(d) From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy. Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission."

SECTION 7.(b) Notwithstanding G.S. 120-285(c), as enacted by Section 7.(a) of this act, the President Pro Tempore of the Senate and the Speaker of the House of Representatives may appoint members to the Joint Legislative Commission on Energy Policy to terms that begin prior to the convening of the 2013 General Assembly. The terms of members appointed pursuant to this section shall end upon the convening of the 2013 General Assembly. Members appointed pursuant to this section who are otherwise qualified to serve on the Commission may be reappointed to the Commission upon the convening of the 2013 General Assembly.

PART VIII. EFFECTIVE DATE

SECTION 8. Sections 5.(a) through 5.(f), 5.(h), and 5.(i) of this act are effective when this act becomes law and apply to wells drilled and leases or contracts entered into on or after that date. Sections 1.(a) through 1.(h), Sections 2.(a) through 2.(j), Sections 3.(a) through

3.(d), Section 4, Section 5.(g), and Sections 7.(a) and 7.(b) of this act become effective October 1, 2012. Sections 6.(a) through 6.(g) of this act become effective December 1, 2012, and apply to real estate transfers or dispositions occurring on or after that date. All other sections of this act are effective when the act becomes law.

SENATE BILL 820:
Clean Energy and Economic Security Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 31, 2012
Introduced by:	Sens. Rucho, Blake, Walters	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to First Edition S820-CSRIf-44 [v. 13]		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 820 would:

- *Direct various State agencies to develop a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.*
- *Amend several statutes that currently prohibit the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes; but prohibit issuance of permits for these activities until such time as the General Assembly takes legislative action to allow issuance of such permits.*
- *Enact various other provisions related to management of oil and gas exploration and development activities.*

As introduced, this bill was identical to H1054, as introduced by Reps. Hager, Gillespie, K. Alexander, and R. Moore, which is currently in House Environment, if favorable, Finance.]

BACKGROUND: Several years ago the North Carolina Geological Survey recognized thick sections of organic shale located in the State (Triassic Strata of the Deep River Basin – Lee and Chatham, Counties) as a potential gas resource. Modern exploration and gas production technology, such as horizontal drilling and hydraulic-fracturing, has enabled the extraction of shale gas in similar formations in other states. The use of hydraulic fracturing involves drilling a well and injecting drilling fluids under pressure to fracture the shale rock and release the gas. Drilling fluids are mostly made up of water, but also include other chemicals. The exact makeup of the drilling fluids varies from company to company.

In 2011 the General Assembly enacted legislation (S.L. 2011-276/House Bill 242) to direct the Department of Environment and Natural Resources (DENR), in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose. Pursuant to S.L. 2011-276, DENR, in conjunction with the other entities, issued a draft report in March of 2012. After receiving public comment regarding the draft report (including public comment received at public meetings held on March 20, March 27, and April 2, 2012), DENR issued a final report on April 30, 2012 that stated "[a]fter reviewing other studies and experiences in oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as long as the right protections are in place. It will be important to have those measures in place before issuing permits for hydraulic fracturing in North Carolina's shale formations." and set forth a number of associated recommendations.

CURRENT LAW: Article 27 of Chapter 113 of the General Statutes governs drilling and exploration for oil and gas in the State. The General Statutes currently prohibit horizontal drilling[1] and injection of any wastes to the subsurface or groundwaters of the State by means of wells[2]. State rules also specifically prohibit use or operation of a storage related injection well and injection of fluids for oil and gas production.

BILL ANALYSIS:

Part I. Legislative Findings and Intent

Part I of the PCS sets forth legislative findings and intent, which among other things, provide: "it is the intent of the General Assembly to authorize oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing, but to prohibit the issuance of permits for these activities until such time as the General Assembly has determined that a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose has been fully established and takes legislative action to allow the issuance of permits." Part I further states that establishment of a modern regulatory program will be based on the recommendations in DENR's final report and the following principles:

(1) Protection of public health and safety.
(2) Protection of public and private property.
(3) Protection and conservation of the State's air, water, and other natural resources.
(4) Promotion of economic development and expanded employment opportunities.
(5) Productive and efficient development of the State's oil and gas resources.

Part II. Reconstitute the Mining Commission as the Mining and Energy Commission; Rename the Division of Land Resources as the Division of Energy, Mineral, and Land Resources

Part II of the PCS would reconstitute the Mining Commission as the Mining and Energy Commission, and rename DENR's Division of Land Resources as the Division of Energy, Mineral, and Land Resources. The membership of the Commission, as reconstituted under the PCS, would increase from 9 members to 14 in order to add expertise in oil and gas exploration and development. Staffing for the Commission would be provided by DENR's Division of Energy, Mineral, and Land Resources (as renamed under the PCS) and the North Carolina Geological Survey.

In addition to the matters over which the current Mining Commission has jurisdiction and authority (the Mining Act of 1971, the Control of Exploration for Uranium in North Carolina Act of 1983, among other responsibilities), the reconstituted Mining and Energy Commission (Commission) would be required to adopt rules necessary to administer the Oil and Gas Conservation Act (the "Act", Article 27 of Chapter 113 of the General Statutes), hear permit appeals and other controversies arising under the Act. Authority would be shifted from DENR to the Commission to make determinations and issue orders pursuant to the Act to: (i) regulate the spacing of wells and to establish drilling units; (ii) require the operation of wells with efficient gas-oil ratios, and to fix such ratios; (iii) limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste; and (iv) require integration of interests.

The Commission would be required to submit quarterly written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission.

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[1] G.S. 113-393
[2] G.S. 143-214.2(b)

Part III. Mining and Energy Commission and Other Regulatory Agencies to Establish Regulatory Program for the Management of Oil and Gas Exploration and Development in the State and the Use of Horizontal Drilling and Hydraulic Fracturing for that Purpose

Part III of the PCS would direct the Mining and Energy Commission and other regulatory agencies (the Environmental Management Commission (EMC), the Commission for Public Health, and the Department of Labor as appropriate to matters within their jurisdictions) to establish a regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission is directed to adopt rules designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expanded employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. The PCS sets forth a host of specific purposes for which the Commission must adopt rules, including, but not limited to, establishing standards or requirements for all of the following purposes:

- Information and data to be submitted in association with applications for permits to conduct oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing,
- Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed.
- Appropriate well construction and siting standard, limits on water use, stormwater control at sites, and regulation of toxic air emissions from drilling operations (as may be appropriate relative to responsibilities of the EMC for such matters).
- Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing for that purpose (as may be appropriate relative to responsibilities of the Commission for Public Health for such matters).
- Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, particularly diesel fuel, and full disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies, and, with the exception of those items constituting trade secrets, requirements for disclosure of hydraulic fracturing chemicals and constituents to the public.
- Installation of appropriate safety devices, and development of protocols for response to well blowouts, chemical spills, and other emergencies.
- Measures to mitigate impacts on infrastructure, including damage to roads by truck traffic and heavy equipment.
- Notice, record keeping, and reporting.
- Proper well closure, site reclamation, post-closure monitoring, and financial assurance.

The PCS would also direct the Department of Labor to develop, adopt, and enforce rules establishing health and safety standards for workers engaged in oil and gas operations in the State, including operations in which hydraulic fracturing treatments are used for that purpose.

Aside from implementation and enforcement authority over matters specifically given to the Department of Labor and the Commission, the PCS would direct DENR to enforce all other rules and all other laws relating to the conservation of oil and gas. DENR would be required to submit an annual report on its activities in this regard to the Environmental Review Commission (ERC), the Joint Legislative Commission on Energy Policy, the Senate and House of Representatives Appropriations Subcommittees

on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on or before October 1 of each year.

The PCS would direct the Mining and Energy Commission, in conjunction with DENR, the Department of Transportation, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, to identify appropriate levels of funding and potential sources for that funding, including permit fees, bonds, taxes, and impact fees, and report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy and the ERC or before January 1, 2013. The Mining and Energy Commission (in conjunction with the Consumer Protection Division of the North Carolina Department of Justice) would also be required to study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter, and report to the Joint Legislative Commission on Energy Policy and the ERC on or before January 1, 2013.

All rules required to be adopted by the Commission, the EMC, the Commission for Public Health, and the Department of Labor would be required to be adopted no later than October 1, 2014. DENR would be tasked with coordination of the rule adoption process among the various entities. In addition, the PCS would direct that the rules be developed through an open and collaborative process that includes (i) input from scientific and technical advisory groups, (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of Transportation, the Division of Emergency Management of the Department of Public Safety, the Consumer Protection Division of the Department of Justice, the Department of Labor, the Department of Health and Human Services, the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the Rural Advancement Foundation (RAFI-USA), and (iii) broad public participation. The rulemaking entities and DENR would be required to identify changes needed to all existing rules and statutes necessary for the creation and implementation of a modern regulatory program.

Part IV. Authorize Horizontal Drilling and Hydraulic Fracturing; Prohibit Issuance of Permits Pending Subsequent Legislative Action

Part IV of the PCS would authorize the processes of horizontal drilling and hydraulic fracturing by amending two statutes that currently prohibit the practice: (1) G.S. 113-393 currently provides that drilling may not unreasonably vary from the vertical – the PCS would amend this statute to allow horizontal drilling in conjunction with hydraulic fracturing treatments; (2) G.S. 143-214.2 currently prohibits the discharge of waste to the subsurface or groundwaters of the State by means of a well – the PCS would amend this statute to allow injection of hydraulic fracturing fluid for the exploration or development of natural gas resources.

The PCS would also amend the statute governing actions required prior to drilling of wells to clarify that no oil or gas well may be drilled without a permit issued by DENR for the activity. In addition, the PCS would also prohibit the use of hydraulic fracturing treatments in conjunction with oil and gas operations or activities unless DENR has issued a permit for the activity. The PCS prohibits the issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State until the General Assembly takes legislative action to allow the issuance of such permits, in order to allow the Mining and Energy Commission to create a modern regulatory program to govern all aspects of such activities.

Part V. Limit Local Regulation

Part IV of the PCS contains a provision that would preempt provisions of local ordinances, including those regulating land use, that prohibit or have the effect of prohibiting oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose.

Part VI. Landowner and Public Protections

Part VI of the PCS would add a variety of provisions designed to add or enhance protections for landowners and the public in light of oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose, including:

- Modify provisions concerning entry to land for oil and gas activities.
- Establish presumption concerning oil and gas developer's liability for water contamination.
- Modify provisions requiring compensation from developer to surface owner.
- Establish requirement for developer to reclaim surface property and provide associated bond.
- Modify provisions concerning developer's indemnification of surface owner.
- Establish requirement that developers provide certain information to surface owners prior to execution of leases.
- Prohibit operation of "force majeure" clause to extend leases beyond maximum duration set forth in statute.
- Establish amount of minimum royalty payment.
- Require agreement for use of other resources and compensation.
- Require pre-drilling testing of drinking water wells.
- Require recordation of leases.
- Require notice of assignment.
- Establish requirement for minimization of intrusion.
- Require registry of landmen.
- Require publication of information for landowners.
- Require disclosure of information concerning severance of mineral rights to potential purchasers of residential real estate.

Part VII. Create Energy Policy Oversight Commission

Part VII of the PCS would create the Joint Legislative Commission on Energy Policy, which would consist of 10 members and exercise legislative oversight over energy policy in the State.

S820-SMRI-57(CSRIf-44) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 177
Committee Substitute Favorable 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H177-CSTA-4 [v.4]

5/30/2012 5:00:54 PM

Short Title: Clean Energy Transportation Act. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO: (1) DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO PURCHASE SCHOOL BUSES THAT OPERATE ON COMPRESSED NATURAL GAS (CNG); (2) DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER TON PICKUP TRUCKS AND NEW ONE-HALF TON PICKUP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE; (3) CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING INFRASTRUCTURE; (4) ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS; (5) AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW; AND (6) AMEND THE PRODUCTION TAX CREDIT FOR RENEWABLE FUEL FACILITIES.

The General Assembly of North Carolina enacts:

PART I. DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO PURCHASE SCHOOL BUSES THAT OPERATE ON COMPRESSED NATURAL GAS (CNG)

SECTION 1.(a) Notwithstanding any other provision of law and with funds available, beginning July 1, 2013, the Department of Public Instruction shall purchase only passenger school buses (Types A and B) and transit-style school buses (Type D) that operate on compressed natural gas (CNG) to replace Type A, B, and D school buses due to the age, mileage, condition, unique circumstances, or other condition necessitating replacement of a school bus.

SECTION 1.(b) Notwithstanding any other provision of law and with funds available, beginning July 1, 2015, the Department of Public Instruction shall purchase only passenger school buses (Types A and B), transit-style school buses (Type D), and conventional-style school buses (Type C) that operate on compressed natural gas (CNG) to replace school buses due to the age, mileage, condition, unique circumstances, or other condition necessitating replacement of a school bus.

SECTION 1.(c) No later than December 1, 2012, the Department of Public Instruction, in consultation with local school administrative units, shall develop a plan for the

deployment of compressed natural gas (CNG)-fueled buses purchased in accordance with subsections (a) and (b) of this section to local school administrative units based on the following considerations:

(1) The availability of centralized fueling infrastructure.

(2) The ability of a local school administrative unit to operate and maintain compressed natural gas (CNG)-fueled buses.

(3) The characteristics of a local school administrative unit such as the geographic size, the density of the student population, and the number and average length of bus routes.

(4) Any other criteria the Department of Public Instruction deems necessary and applicable to implement this section.

SECTION 1.(d) This section shall not apply to noninstructional activity school buses purchased by a local school administrative unit with local or community funds.

SECTION 1.(e) Beginning January 1, 2013, and annually thereafter, the Department of Public Instruction shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Education Oversight Committee, the House Appropriation Subcommittee on Education, and the Senate Appropriations Subcommittee on Education/Higher Education on the implementation of this section.

PART II. DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER TON PICKUP TRUCKS AND NEW ONE-HALF TON PICKUP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE

SECTION 2.(a) Notwithstanding any other provision of law and with funds available, beginning July 1, 2013, fifty percent (50%) of the new three-quarter ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(b) Notwithstanding any other provision of law and with funds available, beginning July 1, 2015, one hundred percent (100%) of the new three-quarter ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(c) Notwithstanding any other provision of law and with funds available, beginning July 1, 2014, fifty percent (50%) of the new one-half ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(d) Notwithstanding any other provision of law and with funds available, beginning July 1, 2016, one hundred percent (100%) of the new one-half ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(e) Notwithstanding any other provision of law and with funds available, the Department of Transportation shall ensure that at least fifty percent (50%) of the fuel used annually by the Department's three-quarter ton pickup trucks and one-half ton pickup

trucks that are capable of operating on both compressed natural gas (CNG) and gasoline shall be compressed natural gas (CNG).

SECTION 2.(f) Beginning January 1, 2014, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section.

PART III. CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING INFRASTRUCTURE

SECTION 3.(a) The Department of Public Instruction, the Department of Transportation, the Department of Commerce, and the Department of Administration, in consultation with other agencies as applicable, shall create an interagency task force responsible for establishing public-private partnerships with the compressed natural gas (CNG) industry to develop compressed natural gas (CNG) fueling infrastructure to support the operation of the vehicles purchased pursuant to Sections 1 and 2 of this act. The task force, together with private industry, shall evaluate the feasibility and efficacy of the construction and operation of centralized public-private fueling stations and any other fueling options that may be necessary to support the operation of each Department's compressed natural gas (CNG) vehicles.

SECTION 3.(b) Beginning January 1, 2013, and annually thereafter, the task force shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the Joint Legislative Education Oversight Committee, the House Appropriations Subcommittee on Transportation, the Senate Appropriations Subcommittee on Department of Transportation, the House Appropriation Subcommittee on Education, the Senate Appropriations Subcommittee on Education/Higher Education, the House Appropriations Subcommittee on General Government, and the Senate Appropriations Subcommittee on General Government and Information Technology on the implementation of this section.

PART IV. ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS

SECTION 4.(a) The Department of Transportation may operate an electric vehicle charging station at State-owned rest stops along the highways only if all of the following conditions are met:

(1) The electric vehicle charging station is accessible by the public.

(2) The Department has developed a mechanism to charge the user of the electric vehicle charging station a fee in order to recover the cost of electricity consumed, the cost of processing the user fee, and a proportionate cost of the operation and maintenance of the electric vehicle charging station.

SECTION 4.(b) If the cost of the electricity consumed at the electric vehicle charging stations cannot be calculated as provided by subsection (a) of this section, the Department shall develop an alternative mechanism, other than electricity metering, to recover the cost of the electricity consumed at the vehicle charging station.

SECTION 4.(c) The Department may consult with other State agencies and industry representatives in order to develop the mechanisms for cost recovery required pursuant to subsection (a) of this section.

SECTION 4.(d) Beginning January 1, 2013, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section.

PART V. AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW

SECTION 5.(a) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 2(a), 2(b), and 2(c) of Senate Bill 709 read as rewritten:

"**SECTION 2.(a)** Development of ~~Governors'~~ Regional Interstate Offshore Energy Policy Compact. – The Governor ~~is directed to commence~~shall lay the groundwork for development of a regional energy ~~compact~~ strategy by working with the governors of South Carolina and Virginia ~~in order~~ to develop recommendations for creation and implementation of a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor is authorized to work directly with each of the three states' General Assemblies, Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

"**SECTION 2.(b)** No later than three months after the effective date of this act, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to

include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report ~~her~~ the Governor's final recommendations for the ~~three-state energy compact~~regional energy strategy to the ~~Joint Regulatory Reform Committee no later than May 1, 2012.~~ President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than December 31, 2012.

"**SECTION 2.(c)** In addition to the provisions in Sections 2(a) and 2(b) of this act, the Governor is strongly encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States."

SECTION 5.(b) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 3(a) and 3(b) of Senate Bill 709 are repealed.

SECTION 5.(c) If Senate Bill 709 of the 2011 Regular Session becomes law, G.S. 113B-3, as amended by Senate Bill 709, reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Jobs Council shall consist of 12 members to be appointed as follows:

(1) Repealed.

(2) Repealed.

(2a) The Secretary of Commerce.

(3) Eleven public members who are citizens of the State of North Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy Jobs Council shall be made by ~~October 1, 2011,~~September 1, 2012, and the appointed members shall serve four-year terms. Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy Jobs Council shall have the qualifications and shall be appointed as follows:

(1) One member shall be a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be a geologist experienced in ~~offshore~~ natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

(3) One member shall be a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore of the Senate.

(4) One member shall be an energy economist or a person with experience in the financing or business development or an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall be a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore of the Senate.

(6) One member shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of energy, other than wind energy, to be appointed by the Speaker of the House of Representatives.

(8) One member who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) One member shall be a representative with experience in wind energy, to be appointed by the Governor.

(11) One member shall be a representative with experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) One member shall be ~~involved with the biofuels industry,~~experienced in energy policy, to be appointed by the President Pro Tempore of the Senate."

PART VI. AMEND THE PRODUCTION TAX CREDIT FOR RENEWABLE FUEL FACILITIES

SECTION 6. G.S. 105-129.16D(b) reads as rewritten:

"(b) Production Credit. – A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a credit equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is ~~disposed of or taken out of service,~~ used for the production of any other product other than its original intended use, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17."

PART VII. EFFECTIVE DATE

SECTION 7. Section 6 of this act becomes effective when this act becomes law and expires January 1, 2013. The remainder of this act is effective when it becomes law.

HOUSE BILL 177:
Clean Energy Transportation Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	May 31, 2012
Introduced by:	Reps. Samuelson, McElraft	**Prepared by:**	Jennifer Mundt
Analysis of:	PCS to Second Edition H177-CSTA-4 [v.4]		Legislative Analyst

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 177 would:

- ***Direct the Department of Public Instruction to purchase new school buses that operate on compressed natural gas (CNG).***
- ***Direct the Department of Transportation to purchase new ¾ ton and ½ ton pick-up trucks that operate on CNG or CNG and gasoline.***
- ***Create an interagency task force to establish public-private partnerships for the construction and development of CNG fueling infrastructure.***
- ***Establish criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways.***
- ***Amend the Energy Jobs Act of 2011 should it become law.***
- ***Amend the production tax credit for renewable fuel facilities.***

BILL ANALYSIS: The PCS for House Bill 177 would:

Section 1: direct the Department of Public Instruction to purchase passenger- and transit-style school buses that operate on compressed natural gas (CNG) when replacing school buses due to age, mileage, condition, unique circumstances, or other condition necessitating the replacement of a school bus. This section would also direct the Department to work with local school administrative units to develop a plan to deploy CNG buses throughout the State.

Section 2: direct the Department of Transportation to purchase new ¾ ton and ½ ton pick-up trucks that operate on either CNG or CNG and gasoline by establishing a schedule for the purchase of CNG or bi-fuel pickup trucks. This section also directs the Department to report to various legislative oversight committees on the implementation of this program.

Section 3: direct the Departments of Public Instruction, Transportation, Commerce, and Administration, in consultation with other agencies as applicable, to create an interagency task responsible for establishing public-private partnerships with the CNG industry to develop CNG fueling infrastructure to support the operation of school buses and pick-up trucks purchased in accordance with Sections 1 and 2 of this act. The task force would be responsible for evaluating the feasibility and efficacy of the construction and operation of centralized public-private fueling stations and any other fueling options to support the operation of the State's CNG vehicles.

Section 4: establish the following criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways:

- The charging stations must be accessible by the public.

- The Department of Transportation must develop a mechanism to charge the user of the charging station a fee to recover the costs of the electricity consumed, processing fees, and operations and maintenance.

Section 5: amend the Energy Jobs Act of 2011 if it were to become law as follows:

- Directs the Governor to develop a regional strategy with the Governors of South Carolina and Virginia for the exploration, development, and production of commercially viable federal and state offshore energy resources within the three-state region and report on the strategy to the President Pro Tempore and the Speaker of the House.
- Amends some of the qualifications and the timeframe for appointments made to the Energy Jobs Council.

Section 6: amend the production tax credit for renewable fuel facilities to provide that if in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is used for the production of any other product other than its original intended use, the credit expires and the taxpayer may not take any remaining installment of the credit. This amendment would remove the provision in current law that the expiration of the credit is predicated on the facility being disposed of or taken out of service. This section would become effective when the act becomes law and would expire January 1, 2013.

EFFECTIVE DATE: Except as noted above, this act would become effective when it becomes law.

H177-SMTA-11(CSTA-4) v2

COMMERCE

PAGES

Jaelyn Harvey Fayetteville Mansfield

Mallory Lowe	Trinity	McKissick
Leanne Gosey	Mooresboro	Nesbitt
Travis Gillespie	Aberdeen	Blue,
Tyler Coe	Denton	Bingham

Sgt @ Arms

Ron Spann

Charles Harper

Jon Fitchett

Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(yy) G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under ~~Chapter 14, Article 36A.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(zz) G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under ~~Article 36A of Chapter 14 of the General Statutes.~~Article 1A of Chapter 166A of the General Statutes."

EFFECTIVE DATE

SECTION 3. This act becomes effective October 1, 2011.

SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 5-31 TIME: 11 AM

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

Page Name	Hometown	Sponsoring Senator
1 [illegible]	[illegible]	[illegible]
2 Leanne Gosey	Mooresboro	Nesbitt
3 Tyler Coe	Denton	Bingham
4 Jaelyn Harvey	Fayetteville	Mansfield
5 [illegible]	[illegible]	[illegible]
6 Mallory Lowe	Trinity	McKissick
7 Travis Gillespie	Aberdeen	Blue
8		
9		
10		

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Misiewicz	PSG
Ru Kaylan	Kaylan Law Firm
[illegible]	DENC
[illegible]	Bullington G
[illegible]	WPTF- [illegible]
Ryhe Longest	Duke
Jennifer Ross	ENV NC
Chris Kachadoorian	ENV NC
Walter Gwizynski	ENV NC
Margaret Hostetler	Environment North Carolina
[illegible]	MWC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Conley	BBCOR
Jon Wilkin	Commerce
Doug Hebson	WM
Chris Dixon	ACWA
Amy McConkey	NC BCW
Erin Wynia	NCLM
Pam Meyer	NCLM
John Monaghan	Piedmont Natural Gas
Elise Quick	Troutman Sanders
Karen Bestmann	Troutman Sanders
Laura White	Raleigh Public Record

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Thompson	Dominion NC Power
Bill Scoggins	TSS
Chris Brown	NCFA
Peter Raabe	American Rivers
John Shaw	PCS
Veronica Butler Shingleton	Governors Office
Susanna Davis	Gov office
Jessica Jones	North Carolina Public Policy
Ashleigh Thornton	MWC
Matt Farrell	NCSBA
Stuart Brooks	Ward and Smith

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
Tom Bean	EDF
Will Morgan	NC Sierra Club
Jaz Tunnell	PNG
Susanna Hailey	K&L Gates
Daniel Baum	Tuggman Stokes
Derek Graham	NCDPI
Scott Denton	NCPTA
Debbie Roberson	Durham Public Schools
	EWSA
	NCACC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
GEORGIA Meetel	Kindred Healthcare
Victoria K. Osborne	Kindred Healthcare
Lauren Whaley	NCCUL
Johnathan Tucker	Moore & Van Allen
Chris Agosto Carreiro	NCMS
Amy Whited	NCMS
Dick Taylor	NCAA
Molly Biggs	Sierra Club
Katherine Joyce	NCASA
Beatrice Williams	CUCA
Diana Kees	DENR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Evatts	Environmental Nat Coalition
Alan Miller	KLG

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Latonia Strickland	NCACC
Trina Ozer	DENR
Robin Smith	DENR
Kari Barsness	DENR
Cassidy Nolan	NCCN
Dan Conrad	NCCN
Dee Freeman	NCLCV
MaryMalle Asbill	SELC
J Goodman	NC CHAMBER
Amy Fullbright	KL Gates
Paul Sherman	NCFB

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Elmore	Moore & Van Allen
Tommy Sevier	Moore and Van Allen
DANIEL H. MOENTER	MARATHON PETROLEUM COMPANY LP
Clare FitzGerald	DENR
Rita Harris	NC Commerce
Jennifer Epperson	NC DOJ

SENATE COMMERCE COMMITTEE
Tuesday, June 5, 2012 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 5, 2012, in Room 1027 of the Legislative Building. Twenty-five members of the committee were present. Allyson Wilson of Burlington, Rebecca Harris of Charlotte, Taylor Parrish of Angier, Richard Whelan of High Point, Peter Ojo of Fayetteville, Alyssa Smith of Morganton, Julia Chavis of Raleigh, Ryan Williams of Laurinburg, Catherine Blalock of Asheville and Bellamy Harden of Raleigh served as pages. Senator Apodaca initially presided. Senator Brown chaired.

HJR 1034 – Confirm Tamara Nance to Industrial Comm.

Representative Folwell was recognized to explain the bill. It confirms the appointment of Tamara Nance to the Industrial Commission for a term of six years. Ms. Nance was initially appointed by Governor Perdue on June 22, 2011 to fill a vacancy. Her current term expires June 30, 2012 with her new term expiring June 30, 2018. Ms. Nance was recognized for comments and she thanked the Committee for its endorsement. Senator Doug Berger was recognized to enthusiastically endorse Ms. Nance and moved for a favorable report. The motion carried. A copy of the bill, the summary, Ms. Nance's curriculum vitae, the State Ethics Commission's evaluation of economic interest, and Ms. Nance's economic interest statement is attached.

SB 820 – Clean Energy and Economic Security Act

Senator Rucho was recognized to explain the bill. Senator Apodaca moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would direct various State agencies to develop a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose. It would amend several statutes that currently prohibit the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes; but prohibit issuance of permits for these activities until such time as the General Assembly takes legislative action to allow issuance of such permits. It enacts various other provisions related to management of oil and gas exploration and development activities. Jennifer McGinnis, an attorney with the Research Division, was recognized to summarize the bill, section by section. Bill Weatherspoon, representing the NC Petroleum Council, was recognized to speak in favor of the bill. Erin Wynia, NC League of Municipalities – Legislative & Regulatory Issues Manager, expressed concern about local control and authority issues. Will Morgan, NC Sierra Club – Director of Government Relations, was concerned with potential risks. Rob Jackson, Duke University – Professor of Environmental Sciences, was concerned about the makeup of the oversight committee and the legalization of fracking with environmental concerns to be addressed later. Kevin Leonard, NC County Commissioners Association, advocated for county control. Darryl Moss, Mayor of Creedmoor, wants alternatives and worries about mineral rights.

Laura Johnson, a Lee County landowner, has eminent domain concerns. Lew Ebert, NC Chamber, supports the creation of jobs and the meeting of energy needs. Andy Wilkinson, Pinehurst Village manager, wants local to have a voice in the matter. Bob Joyce, Sanford Chamber President, supports the bill since it will create jobs, have a positive economic impact, and produce clean energy. Jennifer McGinnis was asked to clarify Section 3, eminent domain is existing law, in place since 1945 – the bill gives broad authority to the new commission and aids in writing new technology into existing law (compulsory pooling). Lynn Weaver, Deputy Attorney General – Consumer Protection Division, was recognized. She warned that compulsory pooling might jeopardize landowners with their mortgage companies and landowners are being pressured by oil managers to sign leases. Jim Womack, a Lee County Commissioner, expressed delight that the bill is moving forward but is concerned about restrict local representation for oversight on what the industry does. Senator Garrou mentioned concerns about the funding of the Clean Water Management Trust Fund. Senator Clodfelter expressed concerns about the new commission's membership diluting and unbalancing traditional mining practices and regulations already in place. He also wanted information on other states with experience on extracting and a severance tax; North Carolina needs to look at instituting a severance tax. Senator Blake moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 177 – Clean Energy Transportation Act

This bill was not taken up during this meeting.

The meeting adjourned at 12:03 PM.

Senator Harry Brown, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk _____
Reading Clerk _____

Corrected: Due to scheduling conflicts, the meeting will be in room 1027 LB.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 5, 2012	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 177	Environmental Technical Corrections 2011.	Representative McElraft Representative Samuelson
SB 820	Clean Energy and Economic Security Act.	Senator Blake Senator Walters Senator Rucho
HJR 1034	Confirm Tamara Nance to Industrial Comm.	Representative Folwell

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 5, 2012	11:00 AM	643 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 177	Environmental Technical Corrections 2011.	Representative McElraft Representative Samuelson
SB 820	Clean Energy and Economic Security Act.	Senator Blake Senator Walters Senator Rucho
HJR 1034	Confirm Tamara Nance to Industrial Comm.	Representative Folwell

Senator Harry Brown, Chair

Senate Commerce Committee
Tuesday, June 5, 2012, 11:00 AM
605 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 177	Environmental Technical Corrections 2011.	Rep. McElraft Rep. Samuelson
HB 1034	Confirm Tamara Nance to Industrial Comm.	Rep. Folwell
SB 820	Clean Energy and Economic Security Act.	Sen. Blake Sen. Walters Sen. Rucho

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Tuesday, June 05, 2012

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

FAVORABLE

H.JR. **1034** Confirm Tamara Nance to Industrial Comm.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Brown

H 1

HOUSE JOINT RESOLUTION 1034*

Sponsors:	Representative Folwell (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.
Referred to:	Rules, Calendar, and Operations of the House.

May 23, 2012

A JOINT RESOLUTION TO CONFIRM THE APPOINTMENT OF TAMARA NANCE TO THE NORTH CAROLINA INDUSTRIAL COMMISSION.

Whereas, G.S. 97-77(a1) provides that appointments by the Governor to the North Carolina Industrial Commission are subject to confirmation by the General Assembly; and

Whereas, the Governor has reappointed Tamara Nance to a new term on the North Carolina Industrial Commission; Now, therefore,

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

SECTION 1. The appointment of Tamara Nance to a term on the North Carolina Industrial Commission to begin on July 1, 2012, and expire on June 30, 2018, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE JOINT RESOLUTION 1034: Confirm Tamara Nance to Industrial Comm

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2012
Introduced by:	Rep. Folwell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***HJR 1034 confirms the appointment of Tamara Nance to the Industrial Commission for a term of six years. Ms. Nance was initially appointed by Governor Perdue on June 22, 2011 to fill a vacancy. Her current term expires June 30, 2012. Her new term will expire June 30, 2018.***

Confirmation by the General Assembly of Industrial Commission appointments made by the Governor is required by G.S. 97-77(a1). The resolution is effective upon ratification.

[As introduced, this bill was identical to S817, as introduced by Sen. Brown, which is currently in Senate Commerce.]

BACKGROUND: The North Carolina Industrial Commission is an agency of the State of North Carolina created by the General Assembly in 1929 to administer the North Carolina Workers' Compensation Act. In 1949, the Industrial Commission was also given authority by the General Assembly to administer the Tort Claims Act. Additionally, the Industrial Commission is charged with administering the Death Benefits Act for Law Enforcement Officers, Firemen, Rescue Squad Workers and Civil Air Patrol Members; the Childhood Vaccine-Related Injury Compensation Program; and Compensation to Persons Erroneously Convicted of Felonies.

In 2011, the General Assembly enacted numerous changes to the law related to workers' compensation. Among other changes, S.L. 2011-287 reduced the number of Commissioners on the North Carolina Industrial Commission from seven to six members. The legislation prohibits any person from serving more than two terms, including any term served prior to June 24, 2011, unless the person served a partial term of less than three years. The legislation also made the Governor's appointments subject to confirmation by the General Assembly by Joint Resolution; a process that is similar to the appointment and confirmation of members of the Utilities Commission. No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the Commissioner was currently serving.

The salary for an Industrial Commissioner is the same as that fixed for a district attorney which is presently $119,305 annually. The Commissioner designated as chair receives $1,500 additional per annum.

Members of the Industrial Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment. G.S. 97-77(a) provides, in part that members of the Industrial Commission "shall devote their entire time to the duties of the Commission."

TAMARA R. NANCE

Attorney at Law
5017 Birchleaf Drive
Raleigh, North Carolina 27606
919-610-9973 (C) 919-807-2521 (W)

1982 Graduate of Ohio State University School of Law
Admitted to Practice in Ohio (1983) and North Carolina (1986)

WORK EXPERIENCE

North Carolina Industrial Commission — July 2011 to present
Commissioner – sit in panels of three to hear workers' compensation and tort claims cases; write opinions for the Full Commission; rule on motions and draft orders for the Full Commission; participate in regular meetings of the Commissioners on various administrative issues; participate in rewriting the workers' compensation, tort claims, and vocational rehabilitation rules to comply with recent statutory changes; serve as speaker at various educational conferences on behalf of the Commission.

Teague, Campbell, Dennis & Gorham — 1996 to 1999, 2005 to 2011
Partner - represented employers and insurers in workers' compensation cases before the Industrial Commission and the appellate courts - clients included the City of Raleigh, Progress Energy, Pitt County Memorial Hospital, Mohawk, Ball Corporation, and City of Washington.

Martin & Jones — 1999 to 2004
Associate – represented employees in workers' compensation cases before the Industrial Commission.

North Carolina Industrial Commission — 1987 to 1995
Deputy Commissioner - heard and decided workers' compensation and tort claims cases.

Womble, Carlyle, Sandridge & Rice — 1986
Associate -assisted in representation of North Carolina manufacturer in multi- district products liability litigation

Supreme Court of Ohio — 1984 to 1986
Assistant Court Reporter- edit, re-write and fact-check appellate court opinions.

HONORS

Best Lawyers in America — 2009 through 2011
North Carolina Super Lawyers — 2008 through 2011

STATE ETHICS COMMISSION

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

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

May 25, 2012

The Honorable Beverly Perdue
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Via e-mail

Re: Evaluation of Statement of Economic Interest Filed By **Ms. Tamara R. Nance**
North Carolina Industrial Commission

Dear Governor Perdue:

Our office is in receipt of Ms. Tamara R. Nance's 2012 Statement of Economic Interest as a member of the **North Carolina Industrial Commission** ("the Commission"). We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S.") also known as the State Government Ethics Act ("SGEA" or "the Act").

We did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The North Carolina Industrial Commission is responsible for the administration of the Workers' Compensation Act, Law Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Acts, and the Childhood Vaccine-Related Injury Act. The Commission processes workers' compensation claims, oversees and provides for the trial of contested cases, approves settlement agreements and administers non-contested cases. The Commission also adjudicates claims made pursuant to the State Tort Claims Act.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. N.C.G.S. §138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. N.C.G.S. §138A-36(a) prohibits public servants from participating in certain official actions from which the public servant, his or her client, a member of the public servant's extended family, or a business or non-profit with which the public servant is associated would receive a reasonably foreseeable financial benefit.

Ms. Nance's spouse is employed by the Department of Correction ("DOC"). In the event that DOC or her spouse should come before the Commission for official action, Ms. Nance would have the potential for a conflict of interest. She should exercise appropriate caution in the performance of her public duties. This would include recusing herself to the extent that this interest would influence or could reasonably appear to influence her actions.

PHONE: 919-715-2071 FAX: 919-715-1644

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

Pursuant to N.C.G.S. 138A-15(c), when an actual or potential conflict of interest is cited by the Commission under N.C.G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

Finally, the State Government Ethics Act mandates that all public servants attend an ethics and lobbying education presentation. Please review the attached document for additional information concerning this requirement.

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

Sincerely,

Teresa H. Pell

Teresa H. Pell
SEI Attorney

THP:bc

cc: Ms. Tamara R. Nance

Attachment: Ethics Education Flyer

NORTH CAROLINA STATE ETHICS COMMISSION

2012 STATEMENT OF ECONOMIC INTEREST

COPY

919-715-2071 www.ethicscommission.nc.gov

FOR OFFICE USE ONLY

RECEIVED

APR 12 2012

STATE ETHICS COMMISSION

COMPLETE THIS FORM AND MAIL SIGNED, ORIGINAL TO
STATE ETHICS COMMISSION, 1324 MAIL SERVICE CENTER, RALEIGH, NC 27699-1324

FILER'S NAME (FIRST, MIDDLE, LAST)

First Name	Middle Name	Last Name	Suffix
TAMARA	ROBIN	NANCE	

MAILING ADDRESS, CITY, STATE, ZIP+4[1]

Address	City	State	Zip
5017 BIRCHLEAF DR.	RALEIGH	NC	27606

HOME ADDRESS, CITY, STATE, ZIP+4

☒ Same as Mailing Address

Address	City	State	Zip

CURRENT EMPLOYER: NC INDUSTRIAL COMMISSION

JOB TITLE: COMMISSIONER

NATURE OF BUSINESS: STATE AGENCY - QUASI-JUDICIAL

DAYTIME PHONE NUMBER: 919-807-2521

ALTERNATE PHONE NUMBER: 919-610-9973

ADDRESS: tammy.nance@~~nc.ic.gov~~ ic.nc.gov

REASON FOR FILING (SELECT ALL THAT APPLY)

☐ STATE GOVERNMENT JOB (Please specify the agency for which you work)

☒ BOARD/COMMISSION (Please list all boards on which you are serving)

NC INDUSTRIAL COMMISSION

☐ JUDICIAL OFFICER (Please specify the office you hold)

☐ LEGISLATOR (Please specify the legislative branch – House or Senate)

Do other immediate family members reside in your household?[2]

☒ Yes ☐ No

FULL NAME[3]	RELATIONSHIP	EMPLOYER	JOB TITLE	NATURE OF BUSINESS
JAMES NANCE	HUSBAND	DEPT. OF CORRECTION	ELECTRONIC TECH III	STATE PRISON
JOHN NANCE	SON	N/A STUDENT	N/A	N/A
JENNIFER NANCE	DAUGHTER	N/A STUDENT	N/A	N/A

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

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

[3] You may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a (non-public) supplement form available from the Commission upon request.

This entire document and any attachments are public record.

	Y903			

I. $10,000 PLUS DISCLOSURES

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

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

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

☒ Yes ☐ No HOME @ 5017 BIRCHLEAF DR.

Owner of Real Estate	% Ownership Interest	Location by City	Location by County
JAMES & TAMARA NANCE	100%	RALEIGH	WAKE
TAMARA NANCE	1/12 th (share of 240 ± acres of timber	LITTLETON/NC	WARREN & HALIFAX

2. Do you, your spouse, or members of your immediate family lease or rent to or from the State real estate with a market value of $10,000 or more?

☐ Yes ☒ No

Name of Lessor	Name of Lessee (Renter)	Location by City	Location by County

3. Within the preceding two years, have you, your spouse, or members of your immediate family sold to or bought from the State personal property with a market value of $10,000 or more?

☐ Yes ☒ No

Name of Purchaser	Name of Seller	Type of Property

4. Do you, your spouse, or members of your immediate family currently lease or rent to or from the State personal property with a market value of $10,000 or more?

☐ Yes ☒ No

Name of Lessor	Name of Lessee (Renter)	Type of Property

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets has no knowledge of the trust's holdings and sources of income, (b) the trustee or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

your spouse, or members of your immediate family own interests (generally stock) valued at $10,000 or more in a publicly owned company?

☒ No (JUST FIDELITY IRA - NOT STOCK OR MUTUAL FUND)

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

Owner of Interest	Full Name of Company (Do not use a ticker symbol)

5(b). Do you, your spouse, or members of your immediate family hold stock options valued at $10,000 or more in a company or business?

☐ Yes ☒ No

Owner of Stock Option	Full Name of Company (Do not use a ticker symbol)

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

☐ Yes ☒ No

Owner of Interest	Name of Business Entity

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

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Security or Equity Interests
☒ None or Not Known	

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

Name of Company or Business Entity	Description of Business Activity with the State
☒ None or Not Known	

7. Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*?

☐ Yes ☒ No

► **Do not list blind trusts[4].**

Name and Address of Trustee	Description of the Trust	Your Relationship to the Trust

8. Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness (mortgage) on your primary personal residence? Examples include credit card debts, auto loans, and student loans.

☒ Yes ☐ No

Name of Debtor (You, Spouse, Immediate Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
JAMES & TAMARA NANCE	BBT (BANK) CAR LOAN
JAMES & TAMARA NANCE	TOYOTA CAR LOAN

II. OTHER DISCLOSURES

9(a). During the preceding calendar year, were you, your spouse or members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes?

☐ Yes ☒ No

► Do not list State boards or entities, or entities created by a political subdivision of the State.
► Do not list organizations of which you are a mere member or subscriber.

Name of Person	His/Her Position	Name of Nonprofit Corporation or Organization	Nature of Business or Purpose of Organization

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

Name of Nonprofit Corporation or Organization	Describe State Business or State Funding
☒ None or Not Known	

10. List all sources of income (not specific amounts) of more than $5,000 received by you, your spouse, or members of your immediate family during the preceding calendar year. **Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, and business income.**

Do *not* include income received from the following sources:

- ▶ Capital gains
- ▶ Federal government retirement
- ▶ Military retirement
- ▶ Social security income/SSDI

Recipient of Income	Name of Source	Type of Business/Industry	Type of Income
☐ I had no reportable income over $5,000 in the preceding calendar year.			
JAMES NANCE	STATE OF NC	PRISON	SALARY
TAMARA NANCE	TEAGUE CAMPBELL DENNIS & GORHAM	LAW FIRM	SALARY (TO 6-24-11)
TAMARA NANCE	STATE OF NC	COMMISSION	SALARY

11. Are you a practicing attorney?

☒ Yes ☐ No ☒ Judicial Officer/State Attorney — prior to 6-24-11 since 7-1-11

If "Yes", check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during the preceding calendar year.

☐ Administrative	☐ Admiralty	☐ Corporate	☐ Criminal
☐ Decedent's Estates	☐ Environmental	☐ Insurance	☐ Labor
☐ Local Government	☐ Real Property	☐ Securities	☐ Tax
☐ Tort litigation (including negligence)	☐ Utilities Regulation	☒ Other category not listed or did not earn legal fees of $10,000 or more during the preceding calendar year WORKERS' COMP — prior to 6-24-11 but not since	

12. Are you (1) a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association **and** (2) did you charge or were you paid over $10,000 for those services during the preceding calendar year?

☐ Yes ☐ No

Type of Business	Nature of Services Rendered

This entire document and any attachments are public record.

13. Are you or your employer, your spouse or members of your immediate family, or their employer:

- Licensed by the State board or employing entity with which you are or will be associated **or**
- Regulated by the State board or employing entity with which you are or will be associated **or**
- Have a business relationship with the State board or employing entity with which you are or will be associated?

☐ Yes ☒ No ☐ Legislator/Judicial Officer - You are not required to complete this question if you are filing because you are a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices.

Name of Person	Name of Employer (If applicable)	Type of Relationship (Licensing, Regulatory, Business)

14. During the preceding calendar year, were you, your spouse, or members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest pertaining to subject matter areas over which your agency or board may have jurisdiction?

☒ Yes ☐ No ☐ Legislator/Judicial Officer - You are not required to complete this question if you are filing because you are a legislator or a judicial officer or you are filing as an appointee to those offices.

▶Do not list organizations of which you are only a member (not a leadership role).

Name of Person	Name of Society, Organization or Advocacy Group	Leadership Position (Director, Officer, Board Member)
TAMARA NANCE	TEAGUE CAMPBELL DENNIS & GORHAM	PARTNER UNTIL 6-24-11

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction?

☐ Yes ☒ No

Offense	Date of Conviction	County of Conviction	State of Conviction

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed or filed or were nominated as a candidate), did you

- receive any gift(s) exceeding $200 per quarter from a person or group of persons acting together, **and**
- when both you and those person(s) were outside North Carolina at the time you accepted the gift(s), **and**
- the gift(s) were given under circumstances that would lead a reasonable person to conclude that they were given for lobbying?

☐ Yes ☒ No

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

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

Date Item Received	Name and Address of Donor(s)	Describe Item Received	Estimated Market Value

ıg the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate) have you

- accepted a "scholarship" exceeding $200 from a person or group of persons acting together **and**

hose person(s) were outside North Carolina **and**

he scholarship was related to your public position? **A "scholarship" is a grant-in-aid to attend a conference, meeting, or similar event.**

☐ Yes ☒ No ☐ Judicial Officer - You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee.

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

▶ Legislators are not required to report scholarships paid by a nonpartisan legislative organization of which the legislator or the General Assembly is a member or participant or an affiliate of that organization.

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

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or were you registered as such within the preceding 12 months?

☐ Yes ☒ No

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

19(a). List the name of each business with which you are associated where you or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager.

Name of Person	Relationship to Filer	Name of Company	Role of Person
☒ No Business Associations			

19(b). If you know that any company or business entity listed in 19(a) above has any material business dealings or business contracts with the State, or is regulated by the State, provide a brief description of that business activity.

Name of Company or Business Entity	Description of Business Activity with the State
☒ Not applicable (No entities listed on #19a) ☐ No relationship / Not known	

20. Did a Council of State member appoint you to or recommend you for appointment to a board covered by the Ethics Act? Council of State members are:

- ▶ Governor
- ▶ Lt. Governor
- ▶ Secretary of State
- ▶ State Auditor
- ▶ State Treasurer
- ▶ Superintendent of Public Instruction
- ▶ Attorney General
- ▶ Commissioner of Agriculture
- ▶ Commissioner of Labor
- ▶ Commissioner of Insurance

☒ Yes ☐ No

If "Yes", list all contributions you (not immediate family members) made during the preceding calendar year with a cumulative total of more than $1,000 to the Council of State member who appointed you.

▶Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."

Date	Amount	Contributed to
☒ No contribution(s) with a cumulative total of more than $1,000		

21. Are you now, or are you a prospective appointee to:

a. the head of a principal state department (e.g. cabinet secretary) appointed by the Governor; or
b. a North Carolina Supreme Court Justice, Court of Appeals, Superior or District Court Judge; or
c. a member of any of the following boards:
   - ABC Commission
   - Coastal Resources Commission
   - State Board of Education
   - State Board of Elections
   - Employment Security Commission
   - Environmental Management Commission
   - Industrial Commission
   - State Personnel Commission
   - Rules Review Commission
   - Board of Transportation
   - UNC Board of Governors
   - Utilities Commission
   - Wildlife Resources Commission

☒ Yes ☐ No

If "No", proceed to question 22.

d. If so, were you appointed to, or are you being considered for, appointment to your public position by a Council of State Member (Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance)?

☒ Yes ☐ No

If "No", proceed to question 22.

e. If so, you must indicate whether during the preceding calendar year you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:

i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."

☐ Yes ☒ No

ii. Hosted a fundraiser at your residence or place of business?

☐ Yes ☒ No

iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?

☐ Yes ☒ No

[redacted]

12. Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act?

Yes [X] No

AFFIRMATION

I affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto are public record.

I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

[X] I Agree

TAMARA NANCE
Printed Name

****Notarization is no longer required****

Tamara Nance
Signature

4-10-12
Date

SUBMIT SIGNED, ORIGINAL documents.

	NORTH CAROLINA STATE ETHICS COMMISSION **SUPPLEMENT TO THE 2012 STATEMENT OF ECONOMIC INTEREST**	For Office Use Only RECEIVED MAY 11 2012 STATE ETHICS COMMISSION

Name of Person Filing Supplement: TAMARA NANCE

Name of Agency or Board: NC INDUSTRIAL COMMISSION

Date: 5-11-12

12. Are you (1) a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association **and** (2) did you charge or were you paid over $10,000 for those services during the preceding calendar year?

☐ Yes ☒ No

Type of Business	Nature of Services Rendered

This entire document and any attachments are public record.

AFFIRMATION

I affirm that the information provided in this Statement of Economic Interest and any attachments hereto true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto are public record.

I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

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A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

☒ **I Agree**

TAMARA NANCE

Printed Name

****Notarization is no longer required****

Tamara Nance

Signature

May 11, 2012

Date

Submit SIGNED, ORIGINAL documents.

This entire document and any attachments are public record.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 820
PROPOSED COMMITTEE SUBSTITUTE S820-CSRI-44 [v.15]

6/4/2012 3:58:36 PM

Short Title: Clean Energy and Economic Security Act. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO: (1) RECONSTITUTE THE MINING COMMISSION AS THE MINING AND ENERGY COMMISSION, (2) REQUIRE THE MINING AND ENERGY COMMISSION AND OTHER REGULATORY AGENCIES TO DEVELOP A MODERN REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE, (3) AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC FRACTURING, BUT PROHIBIT THE ISSUANCE OF PERMITS FOR THESE ACTIVITIES PENDING SUBSEQUENT LEGISLATIVE ACTION, (4) ENHANCE LANDOWNER AND PUBLIC PROTECTIONS RELATED TO HORIZONTAL DRILLING AND HYDRAULIC FRACTURING, AND (5) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY.

PART I. LEGISLATIVE FINDINGS AND INTENT

Whereas, in S.L. 2011-276, the General Assembly directed the Department of Environment and Natural Resources, in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose, including the study of all of the following:

(1) Oil and gas resources present in the Triassic Basins and in any other areas of the State.

(2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

(3) Potential environmental, economic, and social impacts arising from such activities, as well as impacts on infrastructure.

(4) Appropriate regulatory requirements for management of oil and gas exploration activities, with particular attention to regulation of horizontal drilling and hydraulic fracturing for that purpose; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources, in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), issued a draft report in March of 2012; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources received public comment regarding the draft report, including public comment received at public meetings held on March 20, March 27, and April 2, 2012; and

Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural Resources (DENR), in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), issued a final report on April 30, 2012; and

Whereas, the final report set forth a number of recommendations, including recommendations concerning all of the following:

(1) Development of a modern oil and gas regulatory program, taking into consideration the processes involved in hydraulic fracturing and horizontal drilling technologies, and long-term prevention of physical or economic waste in developing oil and gas resources.

(2) Collection of baseline data for areas near proposed drill sites concerning air quality and emissions, as well as groundwater and surface water resources and quality.

(3) Requirements that oil and gas operators prepare and have approved water management plans that limit water withdrawals during times of low-flow conditions and droughts.

(4) Enhancements to existing oil and gas well construction standards to address the additional pressures of horizontal drilling and hydraulic fracturing.

(5) Development of setback requirements and identification of areas where oil and gas exploration and development activities should be prohibited.

(6) Development of a State stormwater regulatory program for oil and gas drilling sites.

(7) Development of specific standards for management of oil and gas wastes.

(8) Requirements for disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies and the public.

(9) Prohibitions on use of certain chemicals or constituents in hydraulic fracturing fluids.

(10) Improvements to data management capabilities.

(11) Development of a coordinated permitting program for oil and gas exploration and development activities within the Department of Environment and Natural Resources where it will benefit from the expertise of State geological staff and the ability to coordinate air, land, and water permitting.

(12) Development of protocols to ensure that State agencies, local first responders, and industry are prepared to respond to a well blowout, chemical spill, or other emergency.

(13) Adequate funding for any continued work on the development of a State regulatory program for the natural gas industry.

(14) Appropriate distribution of revenues from any taxes or fees that may be imposed on oil and gas exploration and development activities to support a modern regulatory program for the management of all aspects of oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State, and to support local governments impacted by the activities, including, but not limited to, sufficient funding for improvements to and repair of roads subject to damage by truck traffic and heavy equipment from these activities.

(15) Closure of gaps in regulatory authority over the siting, construction, and operation of gathering pipelines.

(16) Clarifications needed to address local government regulatory authority over oil and gas exploration and development activities, and use of horizontal drilling and hydraulic fracturing for that purpose.

(17) Additional research required on impacts to local governments and local infrastructure, as well as potential economic impacts from oil and gas exploration and development activities.

(18) Development of provisions to address liability of the oil and gas industry for environmental contamination caused by exploration and development activities, particularly with regard to groundwater contamination.

(19) Establishment of a process that affords additional public participation in connection with development of a modern oil and gas regulatory program; and

Whereas, the final report also states "[a]fter reviewing other studies and experiences in oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as long as the right protections are in place. It will be important to have those measures in place before issuing permits for hydraulic fracturing in North Carolina's shale formations."; and

Whereas, the General Assembly concurs in the conclusion of the final report that hydraulic fracturing can be done safely as long as the right protective measures are in place before any permits for horizontal drilling and hydraulic fracturing are issued; and

Whereas, it is the intent of the General Assembly to authorize oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing, but to prohibit the issuance of permits for these activities until such time as the General Assembly has determined that a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose has been fully established and takes legislative action to allow the issuance of permits; and

Whereas, it is the intent of the General Assembly to establish a modern regulatory program based on the recommendations of the final report and the following principles:

(1) Protection of public health and safety.

(2) Protection of public and private property.

(3) Protection and conservation of the State's air, water, and other natural resources.

(4) Promotion of economic development and expanded employment opportunities.

(5) Productive and efficient development of the State's oil and gas resources;

Now, therefore,

The General Assembly of North Carolina enacts:

PART II. RECONSTITUTE THE MINING COMMISSION AS THE MINING AND ENERGY COMMISSION; RENAME THE DIVISION OF LAND RESOURCES AS THE DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES

SECTION 1.(a) Part 6 of Article 7 of Chapter 143B of the General Statutes is repealed.

SECTION 1.(b) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:.

"Part 6A. North Carolina Mining and Energy Commission.

"**§ 143B-293.1 North Carolina Mining and Energy Commission – creation; powers and duties.**

(a) There is hereby created the North Carolina Mining and Energy Commission of the Department of Environment and Natural Resources with the power and duty to adopt rules for the development of the oil, gas, and mining resources of the State.

(1) The North Carolina Mining and Energy Commission shall have the following powers and duties:

a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.

b. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.

c. To adopt rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.

d. To adopt rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

e. To adopt rules necessary to administer the Oil and Gas Conservation Act, pursuant to G.S. 113-391.

(2) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(b) To Commission shall have the authority to hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department under the Oil and Gas Conservation Act, Article 27 of Chapter 113 of the General Statutes. The Commission shall also have the authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to: (i) regulate the spacing of wells and to establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells with efficient gas-oil ratios, and to fix such ratios; (iii) limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; and (iv) require integration of interests as provided in G.S. 113-393.

(c) The Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission. The Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Joint Legislative Commission on Energy Policy and the Environmental Review Commission. The Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

"**§ 143B-293.2 North Carolina Mining and Energy Commission – members; selection; removal; compensation; quorum; services.**

(a) Members, Selection. – The North Carolina Mining and Energy Commission shall consist of fourteen members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designees, nonvoting ex officio.

(2) The State Geologist, or the State Geologist's designee, nonvoting ex officio.

(3) The Assistant Secretary of Energy for the Department of Commerce, or the Assistant Secretary's designee, nonvoting ex officio.

(4) The Chair of the Environmental Management Commission, or the Chair's designees, nonvoting ex officio.

(5) The Chair of the Commission for Public Health, or the Chair's designees, nonvoting ex officio.

(6) One appointed by the Governor who is a representative of the mining industry.

(7) One appointed by the Governor who is a representative of the mining industry.

(8) One appointed by the Governor with experience in oil and gas exploration, production, or development.

(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate with experience in environmental conservation or mitigation.

(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate with experience in oil and gas exploration, production, or development.

(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate with interest in mineral, oil, and gas exploration, production, or development.

(12) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives with experience in environmental conservation or mitigation.

(13) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives with experience in oil and gas exploration, production, or development.

(14) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives with interest in mineral, oil, and gas exploration, production, or development.

(b) Terms. – The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. The term of members appointed under subdivisions (6), (9), and (12) of subsection (a) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (7), (10), and (13) of subsection (a) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (8), (11), and (14) of subsection (a) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three.

(c) Vacancies; Removal from Office. –

(1) Any appointment by the Governor to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commissioner from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(2) Members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of Article VI of the North Carolina Constitution, a member may continue to serve until a successor is duly appointed.

(d) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(f) Staff. – All staff support required by the Commission shall be supplied by the Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

"**§ 143B-293.4 North Carolina Mining and Energy Commission – officers.**

The Mining and Energy Commission shall have a chair and a vice-chair. The Commission shall elect one of its members to serve as Chair, and one of its members to serve as Vice-Chair. The Chair and Vice-Chair shall serve one-year terms beginning August 1 and ending July 31 of the following year. The Chair and Vice-Chair may serve any number of terms, but not more than two terms consecutively.

"**§ 143B-293.5 North Carolina Mining and Energy Commission – meetings.**

The North Carolina Mining and Energy Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least nine members.

"**§ 143B-293.6 North Carolina Mining and Energy Commission – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Mining and Energy Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes.

(b) In the evaluation of each violation, the Commission shall recognize that harm to the natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.

(2) The duration and gravity of the violation.

(3) The effect on ground or surface water quantity or quality or on air quality.

(4) The cost of rectifying the damage.

(5) The amount of money saved by noncompliance.

(6) Whether the violation was committed willfully or intentionally.

(7) The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.

(8) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Commission on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary or the Secretary's designee and all of the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and

when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final decision by the administrative law judge in accordance with G.S. 150B-34 or court order has been served on the violator, the Secretary or the Secretary's designee shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) For purposes of this section, "Secretary" shall mean the Secretary of Environment and Natural Resources."

SECTION 1.(c) Pursuant to G.S. 150B-21.7, rules adopted by the North Carolina Mining Commission shall remain in effect until amended or repealed by the North Carolina Mining and Energy Commission established pursuant to subsection (b) of this section.

SECTION 1.(d) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the North Carolina Mining and Energy Commission as provided in subsection (b) of this section. The Codifier of Rules shall make the conforming rule changes necessary to reflect the reconstitution of the North Carolina Mining Commission to the North Carolina Mining and Energy Commission as provided in subsection (b) of this section.

SECTION 1.(e) The Division of Land Resources of the Department of Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and Land Resources.

SECTION 1.(f) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the renaming of the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as provided in subsection (e) of this section.

SECTION 1.(g) In order to maintain continuity and experience of membership, the Governor and the General Assembly should consider the members of the North Carolina Mining Commission, repealed pursuant to subsection (a) of this section, when appointing the members of the North Carolina Mining and Energy Commission, created by G.S. 143B-293.1, as enacted by subsection (b) of this section.

SECTION 1.(h) The North Carolina Mining and Energy Commission shall submit the first report due under G.S. 143B-293.1(c), as enacted by subsection (b) of this section, on or before January 1, 2013.

PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE

SECTION 2.(a) G.S. 113-380 reads as rewritten:

"**§ 113-380. Violation a misdemeanor.**

~~Any~~ Except as otherwise provided, any person, firm or officer of a corporation violating any of the provisions of ~~G.S. 113-378 or 113-379,~~this Article shall upon conviction thereof be guilty of a Class 1 misdemeanor."

SECTION 2.(b) G.S. 113-389 reads as rewritten:

"**§ 113-389. Definitions.**

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(1) "Commission" shall mean the North Carolina Mining and Energy Commission.

(1a) "Department" shall mean the ~~"Department~~Department of Environment and Natural ~~Resources," as created by this law.~~Resources.

(1b) "Division" shall mean the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources.

(2) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(3) "Gas" shall mean all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7).

(3a) "Hydraulic fracturing fluid" shall mean the base fluid type utilized in a particular hydraulic fracturing treatment.

(3b) "Hydraulic fracturing treatment" shall mean stimulating a well by the application of hydraulic fracturing fluids and additives with force in order to create artificial fractures in the formation for the purpose of improving the capacity to produce hydrocarbons.

..."

SECTION 2.(c) G.S. 113-391 reads as rewritten:

"**§ 113-391. Jurisdiction and authority; rules and orders.**

(a) The Mining and Energy Commission, created by G.S. 143B-293.1, shall establish a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose. The program shall be designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. To establish the program, the Commission shall adopt rules for all of the following purposes:

(1) Regulation of pre-drilling exploration activities, including seismic and other geophysical and stratigraphic surveys and testing.

(2) Regulation of drilling, operation, casing plugging, completion, and abandonment of wells.

(3) Prevention of pollution of water supplies by oil, gas, or other fluids used in oil and gas exploration and development.

(4) Protection of the quality of the water, air, soil, or any other environmental resource against injury or damage or impairment.

(5) Regulation of the processes of horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration. Such rules shall, at a minimum, include standards or requirements related to the following:

a. Information and data to be submitted in association with applications for permits to conduct oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing, which may include submission of hydrogeological investigations and identification of mechanisms to prevent and diagnose sources of groundwater contamination in the area of drilling sites. In formulating these requirements, the Commission shall consider: (i) how North Carolina's geology differs from other states where oil and gas exploration and development activities using the

processes of horizontal drilling and hydraulic fracturing are common, and (ii) the routes of possible groundwater contamination resulting from these activities and the potential role of vertical geological structures such as dikes and faults as conduits for groundwater contamination.

b. Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed.

c. Appropriate well construction standards, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters. Such standards shall address the additional pressures of horizontal drilling and hydraulic fracturing, such as standards for casing and cementing sufficient to handle highly pressurized injection of fluids into a well for purposes of fracturing bedrock and extraction of gas, and construction standards for other gas production infrastructure, such as storage pits and tanks.

d. Appropriate siting standards for wells and other gas production infrastructure, such as storage pits and tanks, including appropriate setback requirements and identification of areas, such as floodplains, where oil and gas exploration and production activities should be prohibited, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters.

e. Limits on water use, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters. Such rules shall be developed in light of water supply in the areas of proposed activity, competing water uses in those areas, and expected environmental impacts from such water withdrawals, including, but not limited to, a requirement that oil and gas operators prepare and have a water and wastewater management plan approved by the Department, which, among other things, limits water withdrawals during times of drought and periods of low flows.

f. Stormwater control at sites, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters.

g. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing for that purpose, as may be appropriate relative to responsibilities of the Commission for Public Health for such matters. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics, that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act, such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells.

h. Regulation of toxic air emissions from drilling operations, as may be appropriate relative to responsibilities of the Environmental Management Commission for such matters.. In formulating appropriate standards, the Department shall assess emissions from oil

and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies, including emissions from associated truck traffic in order to (i) determine the adequacy of the State's current air toxics program to protect landowners who lease their property to drilling operations, and (ii) determine the impact on ozone levels in the area in order to determine measures needed to maintain compliance with federal ozone standards.

i. Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, particularly diesel fuel.

j. Disclosure of chemicals and constituents used in oil and gas exploration, drilling and production and, with the exception of those items constituting trade secrets as defined in G.S. 66-152(3), and that are designated as confidential or as a trade secret under G.S. 132-1.2, requirements for disclosure of those chemicals and constituents to the public.

k. Installation of appropriate safety devices, and development of protocols for response to well blowouts, chemical spills, and other emergencies, including requirements for approved emergency response plans and certified personnel to implement these plans as needed.

l. Measures to mitigate impacts on infrastructure, including damage to roads by truck traffic and heavy equipment, in areas where oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies are proposed to occur.

m. Notice, record keeping, and reporting.

n. Proper well closure, site reclamation, post-closure monitoring, and financial assurance. Rules for financial assurance shall require that an oil or gas developer or operator establish financial assurance that will ensure that sufficient funds are available for well closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident involving a drilling operation, even if the developer or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(6) To require surveys upon application of any owner who has reason to believe that a well has been unlawfully drilled by another into land of the owner without permission. In the event such surveys are required, the costs thereof shall be borne by the owner making the request.

(7) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records.

(8) To prevent "blow-outs," "caving," and "seepage," as such terms are generally understood in the oil and gas industry.

(9) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities.

(10) To regulate the "shooting," perforating, and chemical treatment of wells.

(11) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations.

(12) To regulate the spacing of wells and to establish drilling units.

(13) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil, or any other environmental resource against injury, damage, or impairment.

(14) Any other matter the Commission deems necessary for implementation of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose.

(a1) The regulatory program required to be established and the rules required to be adopted pursuant to subsection (a) of this section shall not include a program or rules for the regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and the coastal sounds as defined in G.S. 113A-103.

(a2) In addition to the matters for which the Commission is required to adopt rules pursuant to subsection (a) of this section, the Commission may adopt rules as it deems necessary for any of the following purposes:

(1) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(2) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this Article and rules adopted thereunder.

(3) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(4) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(a3) The Department shall ~~have jurisdiction and authority of and over all persons and property necessary to~~ administer and enforce ~~effectively~~ the provisions of this ~~law~~ Article, and rules adopted thereunder, and all other laws relating to the conservation of oil and ~~gas.~~gas, except for jurisdiction and authority reserved to the Department of Labor and the Mining and Energy Commission, as otherwise provided. The Commission and the Department may issue orders as may be necessary from time to time in the proper administration and enforcement of this Article and rules adopted thereunder.

(b) The Commission and the ~~Department~~ Department, as appropriate, shall have the authority and it shall be ~~its~~ their duty to make such inquiries as ~~it~~ may ~~think~~ be proper to ~~determine whether or not waste over which it has jurisdiction exists or is imminent.~~implement the provisions of this Article. In the exercise of such power the Commission and the ~~Department~~ Department, as appropriate, shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

(b1) In the exercise of their respective authority over oil and gas exploration and development activities, the Commission and the Department, as applicable, shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public. The State Geologist shall serve as the custodian of all data, information, and records received by the Department pursuant to this subsection and shall ensure that the information is maintained securely as provided in G.S. 132-7.

~~(c) The Department may make rules and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules or orders for the following purposes:~~

~~(1) To require the drilling, operation, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or salt water, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.~~

~~(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.~~

~~(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.~~

~~(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.~~

~~(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.~~

~~(6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.~~

~~(7) To prevent fires.~~

~~(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.~~

~~(9) To regulate the "shooting," perforating, and chemical treatment of wells.~~

~~(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.~~

~~(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.~~

~~(12) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.~~

~~(13) To regulate the spacing of wells and to establish drilling units.~~

~~(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.~~

~~(15) To prevent where necessary the use of gas for the manufacture of carbon black.~~

~~(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment.~~

(d) The Department of Labor shall develop, adopt, and enforce rules establishing health and safety standards for workers engaged in oil and gas operations in the State, including operations in which hydraulic fracturing treatments are used for that purpose.

(e) The Department shall submit an annual report on its activities conducted pursuant to this Article and rules adopted thereunder to the Environmental Review Commission, the Joint

Legislative Commission on Energy Policy the Senate and House of Representatives Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on or before October 1 of each year."

SECTION 2.(d) G.S. 113-392 reads as rewritten:

"**§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.**

(a) Whether or not the total production from a pool be limited or prorated, no rule or order of the ~~Department~~ Commission shall be such in terms or effect

(1) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or

(2) As to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

(b) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the Commission ~~Department~~ shall, after a hearing, establish a drilling unit or units for each pool. The Commission ~~Department~~ may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the Commission ~~Department~~ may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may reasonably be necessary where it is shown, after notice and upon hearing, and the Commission ~~Department~~ finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the Commission ~~Department~~ shall take such action as will offset any advantage which the person securing the exception may have over producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(d) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be ascertained practically; and to that end, the rules, permits and orders of the Commission ~~Department~~ shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir energy."

SECTION 2.(e) G.S. 113-394 reads as rewritten:

"§ 113-394. Limitations on production; allocating and prorating "allowables."

(a) Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the ~~Department~~ Commission shall limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this State. The Commission ~~Department~~ shall then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the ~~Department~~ Commission shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and shall formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and shall distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the ~~Department~~ Commission shall ~~permit~~ allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the ~~Department~~ Commission shall fix the "allowable" for the pool so that waste will be prevented.

(b) The Commission ~~Department~~ shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State. In allocating "allowables" to pools, the ~~Department~~ Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission ~~Department~~ shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the ~~Department~~ Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the ~~Department~~ Commission shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the Commission ~~Department~~ shall limit the total amount of gas which may be produced from such pool. The Commission ~~Department~~ shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set

forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the ~~Department~~ Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized."

SECTION 2.(f) G.S. 113-410 reads as rewritten:

"**§ 113-410. Penalties for other violations.**

Any person who fails to secure a permit prior to drilling a well or using hydraulic fracturing treatments, or who knowingly and willfully violates any provision of this ~~law,~~Article, or any rule or order of the Department made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed ~~one~~ twenty-five thousand dollars ~~($1,000)~~($25,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Department, and such suit, by direction of the Department, shall be instituted and conducted in the name of the Department by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provisions of this law, or any rule or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2.(g) G.S. 113-415 reads as rewritten:

"**§ 113-415. Effect on laws applicable to water and air pollution control, and management of solid and hazardous waste.~~Conflicting laws.~~**

No provision of this Article shall be construed to abridge or otherwise affect the authority and responsibility vested in the Environmental Management Commission related to the control of water and air pollution as provided in in Articles 21 and 21A of Chapter 143 of the General Statutes, or the authority and responsibility vested in the Commission for Public Health related to the management of solid and hazardous waste as provided in in Article 9 of Chapter 130A of the General Statutes.~~repeal, amend, abridge or otherwise affect the authority and responsibility vested in the Environmental Management Commission by Article 7 of Chapter 87, pertaining to the location, construction, repair, operation and abandonment of wells, or the authority or responsibility vested in the Department and the Commission for Public Health by Article 10 of Chapter 130A of the General Statutes pertaining to public water supply requirements.~~"

SECTION 2.(h) G.S. 143B-282 reads as rewritten:

"**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

...

"(2) The Environmental Management Commission shall adopt rules:

...

(l) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

..."

SECTION 2.(i) G.S. 130A-29 reads as rewritten:

"**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

...

(c) The Commission shall adopt rules:

...

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

..."

SECTION 2.(j) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources, the Department of Transportation, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, shall identify appropriate levels of funding and potential sources for that funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local governments impacted by the industry and associated activities; (ii) address expected infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic and heavy equipment; (iii) cover any costs to the State for administering an oil and gas regulatory program, including remediation and reclamation of drilling sites when necessary due to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any other issues that may need to be addressed in the Commission's determination. Any recommendation concerning local impact fees, shall be formulated to require that all such fees be used exclusively to address infrastructure impacts from the drilling operation for which a fee is imposed. The Commission shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 7.(a) of this act, and the Environmental Review Commission or before January 1, 2013.

SECTION 2.(k) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, shall examine the issue of local government regulation of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission shall formulate recommendations that maintain a uniform system for the management of such activities, which allow for reasonable local regulations including required setbacks, infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect of prohibiting oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The Commission shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6.(a) of this act, and the Environmental Review Commission or before January 1, 2013.

SECTION 2.(l) The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources and the Consumer Protection Division of the North Carolina Department of Justice, shall study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter. The Department shall report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6.(a) of this act, and the Environmental Review Commission on or before January 1, 2013.

SECTION 2.(m) All rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public

Health pursuant to this act shall be adopted no later than October 1, 2014. In order to provide for the orderly, efficient, and effective development and adoption of rules and to prevent the adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the Department of Environment and Natural Resources shall coordinate the adoption of the rules. The Commissions and the Department shall develop the rules in an open and collaborative process that includes (i) input from scientific and technical advisory groups, (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of Transportation, the Division of Emergency Management of the Department of Public Safety, the Consumer Protection Division of the Department of Justice, the Department of Labor, the Department of Health and Human Services, the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the Rural Advancement Foundation (RAFI-USA), and (iii) broad public participation. During the development of the rules, the Commissions and the Department shall identify changes required to all existing rules and statutes necessary for the implementation of this act, including repeal or modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this act, the Department shall submit quarterly reports to the Joint Legislative Commission on Energy Policy, created under Section 7.(a) of this act, and the Environmental Review Commission on progress in developing and adopting the rules. The quarterly reports shall include recommendations on changes required to existing rules and statutes and any other findings or recommendations necessary for the implementation of this act. The first report required by this subsection is due January 1, 2013.

SECTION 2.(n) Notwithstanding G.S. 143B-293.5, as enacted by Section 1.(b) of this act, the North Carolina Mining and Energy Commission shall meet at least twice quarterly until December 31, 2015, in order to develop a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.

PART IV. AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC FRACTURING; PROHIBIT ISSUANCE OF PERMITS PENDING SUBSEQUENT LEGISLATIVE ACTION

SECTION 3.(a) G.S. 113-393 reads as rewritten:

"**§ 113-393. Development of lands as drilling unit by agreement or order of ~~Department.~~Commission.**

(a) Integration of Interests and Shares in Drilling Unit. – When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the ~~Department~~ Commission shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided

further that the ~~Department~~ Commission has received no protest thereto, or request for hearing thereon, whether or not 10 days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the ~~Department~~ Commission to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production; with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the ~~Department~~ Commission shall determine the proper costs.

(b) When Each Owner May Drill. – Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the ~~Department~~ Commission is without authority to require integration as provided for in subsection (a) of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(c) Cooperative Development Not in Restraint of Trade. – Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the ~~Department,~~ Commission, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

(d) Variation from Vertical. – Whenever the Department fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the ~~Department~~ Commission shall prescribe rules and the Department shall prescribe orders governing the reasonableness of such variation. This subsection shall not apply to wells drilled for the purpose of exploration or development of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing treatments."

SECTION 3.(b) G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to ~~prohibit~~ prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with

~~G.S. 143-215.1A.~~ G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the exploration or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

SECTION 3.(c) G.S. 113-395 reads as rewritten:

"**§ 113-395. Permits, fees, and notice required for oil and gas activities.~~Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.~~**

(a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall ~~notify~~ submit an application for a permit to the Department upon such form as ~~it~~ the Department may prescribe and shall pay a fee of three thousand dollars ($3,000) for each well. The drilling of any well is ~~hereby~~ prohibited ~~until such notice is given and such fee has been paid and permit granted.~~unless the Department has issued a permit for the activity.

(b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil and gas operations or activities shall submit an application for a permit to the Department upon such form as the Department may prescribe. The use of hydraulic fracturing treatments is prohibited unless the Department has issued a permit for the activity.

(c) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by rules prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty dollars ($450.00). No well shall be abandoned until such notice has been given and such fee has been paid."

SECTION 3.(d) The issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other provision of law shall be prohibited in order to allow the Mining and Energy Commission to create a modern regulatory program to govern all aspects of such activities. No agency of the State, including the Department of Environment and Natural Resources, the Environmental Management Commission, the Commission on Public Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or development activities using the processes of horizontal drilling and hydraulic fracturing until the General Assembly takes legislative action to allow the issuance of such permits.

PART V. LANDOWNER AND PUBLIC PROTECTIONS

SECTION 4.(a) G.S. 113-420 reads as rewritten:

"**§ 113-420. Notice and entry to property.**

(a) Notice Required for Activities That Do Not Disturb Surface of Property. – If an oil ~~and~~ or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil ~~and~~ or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil ~~and~~ or gas drilling operations, the developer or operator shall give written notice to the surface owner at least ~~seven~~ 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.

(2) The purpose for entry on the property.

(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) Notice Required for Land-Disturbing Activities. – If an oil ~~and~~ or gas developer or operator is not the surface owner of the property on which oil ~~and~~ or gas operations are to occur, before entering the property for oil ~~and~~ or gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least ~~14~~ 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.

(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.

(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(c) Venue. – If the oil ~~and~~ or gas developer or operator fails to give notice or otherwise comply with the provisions of ~~as provided in~~ this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages."

SECTION 4.(b) G.S. 113-421 reads as rewritten:

"**§ 113-421. ~~Compensation for damages.~~Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.**

(a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or gas developer or operator is responsible for contamination of a private drinking water well or water supply well, as those terms are defined in G.S. 87-85, that is within 5,000 feet of a wellhead that is part of the oil or gas developer or operator's activities unless the presumption is rebutted by a defense established as set forth in subdivision (1) of this subsection. If a contaminated a private drinking water well or water supply well is located within 5,000 feet of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to the a private drinking water well or water supply well, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(1) In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

a. The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the private drinking water well or water supply well in question conducted in conformance with G.S. 113-423(e).

b. The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the private drinking water well or water supply well conducted in conformance with G.S. 113-423(e).

c. The private drinking water well or water supply well, as those terms are defined in G.S. 87-85, in question is not within 5,000 feet of a wellhead that is part of the oil or gas developer or operator's activities.

d. The contamination occurred as the result of a cause other than drilling activities of the developer or operator.

(a1) Compensation for Other Damages Required. – The oil ~~and~~ or gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

~~(1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.~~

(2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.

(3) Damage to any livestock, crops, or timber determined according to the market value of the resources destroyed, damaged, or prevented from reaching market due to the oil or gas developer's or operator's activities.

(a2) Reclamation of Surface Property Required. – An oil or gas developer or operator who is not the surface owner of the property on which oil or gas operations are to occur shall reclaim all surface areas affected by its operations no later than two years following completion of the operations. Prior to commencement of activities on the property, the oil or gas developer or operator shall provide a bond running to the surface owner sufficient to cover reclamation of the surface owner's property.

(b) Time Frame for Compensation. – When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) Venue. – The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid ~~royalties,~~royalties or other damages owed due to activities of the developer or operator, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

~~(d)~~ Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable."

SECTION 4.(c) G.S. 113-422 reads as rewritten:

"**§ 113-422. Indemnification.**

An oil or gas developer or operator shall indemnify and hold harmless a surface owner against any claims related to the developer's or operator's activities on the surface owner's property, including, but not limited to, (i) claims of injury or death to any person; (ii) ~~for~~ damage to impacted infrastructure or water supplies; (iii) damage to a third party's ~~property that is adjacent to property on which drilling occurs, as well as~~real or personal property; ~~adjacent infrastructure, and wells.~~and (iv) violations of any federal, State, or local law, rule, regulation, or ordinance, including those for protection of the environment."

SECTION 4.(d) G.S. 113-423 reads as rewritten:

"**§ 113-423. ~~Maximum~~ Required lease terms.**

(a) Required Information to be Provided to Potential Lessors. – Prior to executing a lease for oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property with a surface owner, an oil or gas developer or operator, or any agent thereof, shall provide that surface owner with a copy of this Part and a publication produced by the Consumer Protection Division of the North Carolina Department of Justice entitled "Oil & Gas Leases: Landowners' Rights."

(b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to extend a lease beyond the time frames set forth in this subsection.

(c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall provide that the owner of the surface property to which the lease pertains shall receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds of sale of all oil or gas produced from the surface owner's just and equitable share of the oil and gas in the pool, which sum may be diminished by production costs that shall not exceed ten percent (10%) of the of the proceeds of sale of all oil or gas produced from the surface owner's just and equitable share of the oil and gas in the pool. Production costs shall be limited to those associated with compression and dehydration. Royalty payments shall commence no later than six months after the date of first sale of product from the drilling operations subject to the lease and thereafter no later than 60 days after the end of the calendar month within which subsequent production is sold. At the time each royalty payment is made, the oil or gas developer or operator shall provide documentation on the time period for which the royalty payment is made, the quantity of product sold within that period, and the price received, at a minimum. If royalty payments have not been made within the required time frames, the owner of the property to which the lease pertains shall be entitled to interest on the unpaid royalties commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per annum on the unpaid amounts. Upon written request, the owner of the surface property to which the lease pertains shall be entitled to inspect and copy records of the oil or gas developer or operator related to production and royalty payments associated with the lease.

(d) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall clearly state whether the oil or gas developer or operator shall use groundwater or surface water supplies located on the property and, if so, shall clearly state the estimated amount of water to be withdrawn from the supplies on the property, and shall require permission of the landowner therefore. At a minimum, water used by the developer or operator shall not restrict the supply of water for domestic uses by the surface owner. The lease shall provide for full compensation to the landowner for water used from the property by the developer or operator in amount not less than the fair market value of the water consumed based on water sales in the area at the time of use.

(e) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to conduct a

test of all private drinking water wells or water supply wells, as those terms are defined in G.S. 87-85, within 5,000 feet from a wellhead that is part of the oil or gas developer or operator's activities at least 30 days prior to initial drilling activities and at least two follow-up tests within a 24-month period after production has commenced. The Department shall identify the location of all such wells on a property on which drilling operations are proposed to occur. A surface owner may elect to have the Department sample wells located on their property, in lieu of sampling conducted by the oil or gas developer or operator, in which case the developer or operator shall reimburse the Department for the reasonable costs involved in testing of the wells in question. Nothing in this subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property.

(f) Recordation of Leases. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, including assignments of such leases, shall be recorded within 30 days of execution in the register of deeds office in the county that the land that is subject to the lease is located.

(g) Notice of Assignment Required. – Notice of assignment of any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be provided to the owner of the property to which the lease pertains within 30 days of such assignment."

SECTION 4.(e) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-423.1. Surface activities.**

(a) Agreements on Rights and Obligations of Parties. – The developer or operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the developer or operator.

(b) Minimization of Intrusion Required. – An oil or gas developer or operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator. The standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface. Failure of an oil or gas developer or operator to comply with the requirements of this subsection shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages and equitable relief. In any litigation or arbitration based upon this subsection, the surface owner shall present evidence that the developer or operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer or operator shall bear the burden of proof of showing that it minimized intrusion upon and damage to the surface of the land in accordance with the provisions of this subsection. If a developer or operator makes that showing, the surface owner may present rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has conducted oil or gas operations in accordance with a regulatory requirement, contractual obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection shall do any of the following:

(1) Preclude or impair any person from obtaining any and all other remedies allowed by law.

(2) Prevent a developer or operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract.

(3) Establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations."

SECTION 4.(f) G.S. 113-424 is repealed.

SECTION 4.(g) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-425. Registry of landmen required.**

(a) Establishment of Registry. – The Department of Environment and Natural Resources shall establish and maintain a registry of landmen operating in this State. As used in this section, "landman" means a person that, in the course and scope of the person's business, does any of the following:

(1) Acquires or manages oil, gas, or mineral interests.

(2) Performs title or contract functions related to the exploration, exploitation, or disposition of oil, gas, or mineral interests.

(3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights, including the acquisition or divestiture of land or oil, gas, or mineral rights for a pipeline.

(4) Negotiates business agreements that provide for the exploration for or development of oil, gas, or minerals.

(b) Registration Required. – A person may not act, offer to act, or hold oneself out as a landman in this State unless the person is registered with the Department in accordance with this section. To apply for registration as a landman, a person shall submit an application to the Department on a form to be provided by the Department, which shall include, at a minimum, all of the following information:

(1) The name of the applicant or, if the applicant is not an individual, the names and addresses of all principals of the applicant.

(2) The business address, telephone number, and electronic mail address of the applicant.

(3) The social security number of the applicant or, if the applicant is not an individual, the federal employer identification number of the applicant.

(4) A list of all states and other jurisdictions in which the applicant holds or has held a similar registration or license.

(5) A list of all states and other jurisdictions in which the applicant has had a similar registration or license suspended or revoked.

(6) A statement whether any pending judgments or tax liens exist against the applicant.

(c) The Department may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a registrant if the Department determines that the applicant or registrant does any of the following:

(1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.

(2) Uses or attempts to use an expired, suspended, or revoked registration.

(3) Falsely represents oneself as a registered landman.

(4) Engages in any other fraud, deception, misrepresentation, or knowing omission of material facts related to oil, gas, or mineral interests.

(5) Had a similar registration or license denied, suspended, or revoked in another state or jurisdiction.

(6) Otherwise violates this section.

(d) An applicant may challenge a denial, suspension, or revocation of a registration or a reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the General Statutes.

(e) The Department shall adopt rules as necessary to implement the provisions of this section."

SECTION 4.(h) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-426. Publication of information for landowners.**

In order to effect the pre-lease publication distribution requirement as set forth in G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the North Carolina Department of Justice, in consultation with the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Oil & Gas Leases: Landowners' Rights" to provide general information on consumer protection issues and landowner rights, including information on mineral leases, applicable to exploration and extraction of gas or oil. The Division and the Commission shall update the publication as necessary."

SECTION 4.(i) Part 3 of Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-427. Additional remedies.**

The remedies provided by this Part are not exclusive and do not preclude any other remedies that may be allowed by law."

SECTION 5. G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition.

(b1) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser an owners' association and mandatory covenants disclosure statement.

(1) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this subsection. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling. The standard disclosure statement shall require disclosure of whether or not the property to be conveyed is subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the property, including, but not limited to, obligations to pay regular assessments or dues and special assessments. The statement required by this subsection shall include information on all of the following:

a. The name, address, telephone number, or e-mail address for the president or manager of the association to which the lot is subject.

b. The amount of any regular assessments or dues to which the lot is subject.

c. Whether there are any services that are paid for by regular assessments or dues to which the lot is subject.

d. Whether, as of the date the disclosure is signed, there are any assessments, dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject.

e. Whether, as of the date the disclosure is signed, there are any unsatisfied judgments against or pending lawsuits involving the lot, the planned community or the association to which the lot is subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the lot to be sold.

f. Any fees charged by an association or management company to which the lot is subject in connection with the conveyance or transfer of the lot to a new owner.

(2) The owners' association and mandatory covenants disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics, or conditions or the owner is making no representations as to any characteristic or condition contained in the statement.

(b2) With regard to transfers described in G.S. 47E-1, the owner of the real property shall include in any real estate contract an oil, gas, and mineral rights mandatory disclosure as provided in this subsection.

(1) Transfers of residential property set forth in G.S.47E-2 are excluded from this requirement, except that the exemptions provided under subdivisions (9) and (11) of G.S. 47E-2 specifically are not excluded from this requirement.

(2) The disclosure shall be conspicuous, shall be in boldface type and shall be as follows:

OIL, GAS AND MINERAL RIGHTS DISCLOSURE

Oil, gas, and mineral rights (hereinafter "mineral rights") can be severed from the title to real property by conveyance (deed) of the mineral rights from the owner or by reservation of the mineral rights by the owner. If mineral rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights, Seller makes the following disclosures:

		Yes	No	No Representation
_____ Buyer Initials	1. Mineral rights were severed from the property by a previous owner.	___	___	___
		Yes	No	
_____ Buyer Initials	2. Seller has severed the mineral rights from the property.	___	___	
		Yes	No	
_____ Buyer Initials	3. Seller intends to sever the mineral rights from the property prior to transfer of title to Buyer"	___	___	

PART VI. CREATE ENERGY POLICY OVERSIGHT COMMISSION

SECTION 6.(a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Joint Legislative Commission on Energy Policy.

"**§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

(a) The Joint Legislative Commission on Energy Policy is established.

(b) The Commission shall consist of 10 members as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate, at least one of whom is a member of the minority party.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, at least one of whom is a member of the minority party.

(c) Terms on the Commission are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. A member continues to serve until the member's successor is appointed.

"**§ 120-286. Purpose and powers and duties of Commission.**

(a) The Joint Legislative Commission on Energy Policy shall exercise legislative oversight over energy policy in the State. In the exercise of this oversight, the Commission may do any of the following:

(1) Monitor and evaluate the programs, policies, and actions of the Mining and Energy Commission established pursuant to G.S. 143B-293.1, the Energy Policy Council established pursuant to G.S. 113B-2, the Energy Division in the Department of Commerce, the Utilities Commission and Public Staff established pursuant to Chapter 62 of the General Statutes, and of any other

board, commission, department, or agency of the State or local government with jurisdiction over energy policy in the State.

(2) Review and evaluate existing and proposed State statutes and rules affecting energy policy and determine whether any modification of these statutes or rules is in the public interest.

(3) Monitor changes in federal law and court decisions affecting energy policy.

(4) Monitor and evaluate energy-related industries in the State and study measures to promote these industries.

(5) Study any other matters related to energy policy that the Commission considers necessary to fulfill its mandate.

(b) The Commission may make reports and recommendations, including proposed legislation, to the General Assembly from time to time as to any matter relating to its oversight and the powers and duties set out in this section.

"**§ 120-287. Organization of Commission.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on Energy Policy. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session.

(b) A quorum of the Commission is six members.

(c) While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02.

(d) From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy. Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission."

SECTION 6.(b) Notwithstanding G.S. 120-285(c), as enacted by Section 7.(a) of this act, the President Pro Tempore of the Senate and the Speaker of the House of Representatives may appoint members to the Joint Legislative Commission on Energy Policy to terms that begin prior to the convening of the 2013 General Assembly. The terms of members appointed pursuant to this section shall end upon the convening of the 2013 General Assembly. Members appointed pursuant to this section who are otherwise qualified to serve on the Commission may be reappointed to the Commission upon the convening of the 2013 General Assembly.

PART VII. EFFECTIVE DATE

SECTION 8. Sections 4.(a) through 4.(f), 4.(h), and 4.(i) of this act are effective when this act becomes law and apply to wells drilled and leases or contracts entered into on or after that date. Sections 1.(a) through 1.(h), Sections 2.(a) through 2.(j), Sections 3.(a) through 3.(d), Section 4.(g), and Sections 6.(a) and 6.(b) of this act become effective October 1, 2012. Section 5 becomes effective October 1, 2012, and applies to real estate transfers or dispositions occurring on or after that date. All other sections of this act are effective when the act becomes law.

SENATE BILL 820:
Clean Energy and Economic Security Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2012
Introduced by:	Sens. Rucho, Blake, Walters	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to First Edition S820-CSRI-44 [v. 15]		

CHANGES MADE BY PCS:

- Modifies language concerning development of rules for disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production. Such rules would need to require disclosure, and, with the exception of those items constituting trade secrets under the statutes, require disclosure of those chemicals and constituents to the public.
- Adds detail to a requirement included in the previous version of the PCS that the Mining and Energy Commission develop rules to require financial assurance in association with oil and gas exploration and development activities. (see G.S. 113-391(a)(5)n. on page 10).
- Adds language to clarify that the modern regulatory program to be developed for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose does not include a program or rules for the regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and the coastal sounds. (see new G.S. 113-391(a1) on page 11).
- Deletes provision that would have preempted local governments from enacting ordinances that would prohibit or have the effect of prohibiting oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose. Adds new provision to require the Mining and Energy Commission and other entities to study the issue and formulate recommendations for legislative action (see new Section 2.(k) on page 16).
- Modifies provision that requires sellers of residential real estate to disclose information concerning severance of mineral rights to potential purchasers of residential real estate. Rather than requiring disclosure through a stand-alone mandatory disclosure statement, the provision now requires inclusion of a conspicuous statement on severance of mineral rights in any real estate contract for residential transactions. (see new Section 5 on pages 26 and 27).

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 820 would:

- ***Direct various State agencies to develop a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.***
- ***Amend several statutes that currently prohibit the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes; but prohibit issuance of permits for these activities until such time as the General Assembly takes legislative action to allow issuance of such permits.***
- ***Enact various other provisions related to management of oil and gas exploration and development activities.***

[As introduced, this bill was identical to H1054, as introduced by Reps. Hager, Gillespie, K. Alexander, and R. Moore, which is currently in House Environment, if favorable, Finance.]

BACKGROUND: Several years ago the North Carolina Geological Survey recognized thick sections of organic shale located in the State (Triassic Strata of the Deep River Basin – Lee and Chatham, Counties) as a potential gas resource. Modern exploration and gas production technology, such as horizontal drilling and hydraulic-fracturing, has enabled the extraction of shale gas in similar formations in other states. The use of hydraulic fracturing involves drilling a well and injecting drilling fluids under pressure to fracture the shale rock and release the gas. Drilling fluids are mostly made up of water, but also include other chemicals. The exact makeup of the drilling fluids varies from company to company.

In 2011 the General Assembly enacted legislation (S.L. 2011-276/House Bill 242) to direct the Department of Environment and Natural Resources (DENR), in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI-USA), to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose. Pursuant to S.L. 2011-276, DENR, in conjunction with the other entities, issued a draft report in March of 2012. After receiving public comment regarding the draft report (including public comment received at public meetings held on March 20, March 27, and April 2, 2012), DENR issued a final report on April 30, 2012 that stated "[a]fter reviewing other studies and experiences in oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as long as the right protections are in place. It will be important to have those measures in place before issuing permits for hydraulic fracturing in North Carolina's shale formations." and set forth a number of associated recommendations.

[As introduced, this bill was identical to H1054, as introduced by Reps. Hager, Gillespie, K. Alexander, R. Moore, which is currently in House Environment, if favorable, Finance.]

CURRENT LAW: Article 27 of Chapter 113 of the General Statutes governs drilling and exploration for oil and gas in the State. The General Statutes currently prohibit horizontal drilling[1] and injection of any wastes to the subsurface or groundwaters of the State by means of wells[2]. State rules also specifically prohibit use or operation of a storage related injection well and injection of fluids for oil and gas production.

BILL ANALYSIS:

Part I. Legislative Findings and Intent

Part I of the PCS sets forth legislative findings and intent, which among other things, provide: "it is the intent of the General Assembly to authorize oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing, but to prohibit the issuance of permits for these activities until such time as the General Assembly has determined that a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose has been fully established and takes legislative action to allow the issuance of permits." Part I further states that establishment of a modern regulatory program will be based on the recommendations in DENR's final report and the following principles:

(1) Protection of public health and safety.

[1] G.S. 113-393
[2] G.S. 143-214.2(b)

(2) Protection of public and private property.
(3) Protection and conservation of the State's air, water, and other natural resources.
(4) Promotion of economic development and expanded employment opportunities.
(5) Productive and efficient development of the State's oil and gas resources.

Part II. Reconstitute the Mining Commission as the Mining and Energy Commission; Rename the Division of Land Resources as the Division of Energy, Mineral, and Land Resources

Part II of the PCS would reconstitute the Mining Commission as the Mining and Energy Commission, and rename DENR's Division of Land Resources as the Division of Energy, Mineral, and Land Resources. The membership of the Commission, as reconstituted under the PCS, would increase from 9 members to 14 in order to add expertise in oil and gas exploration and development. Staffing for the Commission would be provided by DENR's Division of Energy, Mineral, and Land Resources (as renamed under the PCS) and the North Carolina Geological Survey.

In addition to the matters over which the current Mining Commission has jurisdiction and authority (the Mining Act of 1971, the Control of Exploration for Uranium in North Carolina Act of 1983, among other responsibilities), the reconstituted Mining and Energy Commission (Commission) would be required to adopt rules necessary to administer the Oil and Gas Conservation Act (the "Act", Article 27 of Chapter 113 of the General Statutes), hear permit appeals and other controversies arising under the Act. Authority would be shifted from DENR to the Commission to make determinations and issue orders pursuant to the Act to: (i) regulate the spacing of wells and to establish drilling units; (ii) require the operation of wells with efficient gas-oil ratios, and to fix such ratios; (iii) limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste; and (iv) require integration of interests.

The Commission would be required to submit quarterly written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission.

Part III. Mining and Energy Commission and Other Regulatory Agencies to Establish Regulatory Program for the Management of Oil and Gas Exploration and Development in the State and the Use of Horizontal Drilling and Hydraulic Fracturing for that Purpose

Part III of the PCS would direct the Mining and Energy Commission and other regulatory agencies (the Environmental Management Commission (EMC), the Commission for Public Health, and the Department of Labor as appropriate to matters within their jurisdictions) to establish a regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission is directed to adopt rules designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expanded employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. The PCS sets forth a host of specific purposes for which the Commission must adopt rules, including, but not limited to, establishing standards or requirements for all of the following purposes:

- Information and data to be submitted in association with applications for permits to conduct oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing,

- Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed.
- Appropriate well construction and siting standard, limits on water use, stormwater control at sites, and regulation of toxic air emissions from drilling operations (as may be appropriate relative to responsibilities of the EMC for such matters).
- Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing for that purpose (as may be appropriate relative to responsibilities of the Commission for Public Health for such matters).
- Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, particularly diesel fuel, and disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production. Such rules would need to require disclosure, and, with the exception of those items constituting trade secrets as defined in G.S. 66-152(3), and that are designated as confidential or as a trade secret under G.S. 132-1.2, require disclosure of those chemicals and constituents to the public.
- Installation of appropriate safety devices, and development of protocols for response to well blowouts, chemical spills, and other emergencies.
- Measures to mitigate impacts on infrastructure, including damage to roads by truck traffic and heavy equipment.
- Notice, record keeping, and reporting.
- Proper well closure, site reclamation, post-closure monitoring, and financial assurance.

The PCS would also direct the Department of Labor to develop, adopt, and enforce rules establishing health and safety standards for workers engaged in oil and gas operations in the State, including operations in which hydraulic fracturing treatments are used for that purpose.

Aside from implementation and enforcement authority over matters specifically given to the Department of Labor and the Commission, the PCS would direct DENR to enforce all other rules and all other laws relating to the conservation of oil and gas. DENR would be required to submit an annual report on its activities in this regard to the Environmental Review Commission (ERC), the Joint Legislative Commission on Energy Policy, the Senate and House of Representatives Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on or before October 1 of each year.

The PCS would direct the Mining and Energy Commission, in conjunction with DENR, the Department of Transportation, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, to identify appropriate levels of funding and potential sources for that funding, including permit fees, bonds, taxes, and impact fees, and report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy and the ERC or before January 1, 2013. The Mining and Energy Commission (in conjunction with the Consumer Protection Division of the North Carolina Department of Justice) would also be required to study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter, and report to the Joint Legislative Commission on Energy Policy and the ERC on or before January 1, 2013.

In addition, the PCS would direct the Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources, the League of Municipalities and the Association of County Commissioners to study the issue of local government regulation of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose. The

Commission must formulate recommendations that maintain a uniform system for the management of such activities, which allow for reasonable local regulations including required setbacks, infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect of prohibiting oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The Commission must report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission or before January 1, 2013.

All rules required to be adopted by the Commission, the EMC, the Commission for Public Health, and the Department of Labor would be required to be adopted no later than October 1, 2014. DENR would be tasked with coordination of the rule adoption process among the various entities. In addition, the PCS would direct that the rules be developed through an open and collaborative process that includes (i) input from scientific and technical advisory groups, (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of Transportation, the Division of Emergency Management of the Department of Public Safety, the Consumer Protection Division of the Department of Justice, the Department of Labor, the Department of Health and Human Services, the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the Rural Advancement Foundation (RAFI-USA), and (iii) broad public participation. The rulemaking entities and DENR would be required to identify changes needed to all existing rules and statutes necessary for the creation and implementation of a modern regulatory program.

Part IV. Authorize Horizontal Drilling and Hydraulic Fracturing; Prohibit Issuance of Permits Pending Subsequent Legislative Action

Part IV of the PCS would authorize the processes of horizontal drilling and hydraulic fracturing by amending two statutes that currently prohibit the practice: (1) G.S. 113-393 currently provides that drilling may not unreasonably vary from the vertical – the PCS would amend this statute to allow horizontal drilling in conjunction with hydraulic fracturing treatments; (2) G.S. 143-214.2 currently prohibits the discharge of waste to the subsurface or groundwaters of the State by means of a well – the PCS would amend this statute to allow injection of hydraulic fracturing fluid for the exploration or development of natural gas resources.

The PCS would also amend the statute governing actions required prior to drilling of wells to clarify that no oil or gas well may be drilled without a permit issued by DENR for the activity. In addition, the PCS would also prohibit the use of hydraulic fracturing treatments in conjunction with oil and gas operations or activities unless DENR has issued a permit for the activity. The PCS prohibits the issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State until the General Assembly takes legislative action to allow the issuance of such permits, in order to allow the Mining and Energy Commission to create a modern regulatory program to govern all aspects of such activities.

Part V. Landowner and Public Protections

Part VI of the PCS would add a variety of provisions designed to add or enhance protections for landowners and the public in light of oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose, including:

- Modify provisions concerning entry to land for oil and gas activities.
- Establish presumption concerning oil and gas developer's liability for water contamination.

- Modify provisions requiring compensation from developer to surface owner.
- Establish requirement for developer to reclaim surface property and provide associated bond.
- Modify provisions concerning developer's indemnification of surface owner.
- Establish requirement that developers provide certain information to surface owners prior to execution of leases.
- Prohibit operation of "force majeure" clause to extend leases beyond maximum duration set forth in statute.
- Establish amount of minimum royalty payment.
- Require agreement for use of other resources and compensation.
- Require pre-drilling testing of drinking water wells.
- Require recordation of leases.
- Require notice of assignment.
- Establish requirement for minimization of intrusion.
- Require registry of landmen.
- Require publication of information for landowners.
- Require disclosure of information concerning severance of mineral rights to potential purchasers of residential real estate.

Part VI. Create Energy Policy Oversight Commission

Part VII of the PCS would create the Joint Legislative Commission on Energy Policy, which would consist of 10 members and exercise legislative oversight over energy policy in the State.

S820-SMRI-58(CSRI-44) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 177
Committee Substitute Favorable 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H177-CSTA-4 [v.5]

6/4/2012 4:48:34 PM

Short Title: Clean Energy Transportation Act. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO: (1) CREATE AN INTERAGENCY TASK FORCE TO STUDY THE FEASIBILITY AND DESIRABILITY OF ADVANCING THE USE OF ALTERNATIVE FUELS BY LOCAL SCHOOL ADMINISTRATIVE UNITS AND THE DEVELOPMENT OF ASSOCIATED FUELING INFRASTRUCTURE; (2) DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER TON PICKUP TRUCKS AND NEW ONE-HALF TON PICKUP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE AND EVALUATE ALTERNATIVE FUELS FOR THE REMAINDER OF THE DEPARTMENT'S FLEET; (3) ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS AND; (4) AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW.

The General Assembly of North Carolina enacts:

PART I. CREATE AN INTERAGENCY TASK FORCE TO STUDY THE FEASIBILITY AND DESIRABILITY OF ADVANCING THE USE OF ALTERNATIVE FUELS BY LOCAL SCHOOL ADMINISTRATIVE UNITS AND THE DEVELOPMENT OF ASSOCIATED FUELING INFRASTRUCTURE

SECTION 1.(a) It is the intent of the General Assembly to reduce the costs of fuel used by local school administrative units and transition to the use of cleaner, more cost-effective, and where available, State-produced fuel resources for school transportation purposes.

SECTION 1.(b) The State Energy Office within the Department of Commerce, in consultation with the Department of Administration and the Department of Public Instruction, and other agencies as applicable, shall create an interagency task force responsible for studying the feasibility and desirability of advancing the use of alternative fuels, as defined in G.S. 143-58.4, by local school administrative units. As part of its study, the State Energy Office shall perform a cost-benefit analysis on each alternative fuel, using both current and projected fuel pricing, to identify the fuel or fuel mix that would be the most cost-effective for each school bus used by local school administrative units. The State Energy Office shall evaluate the cost of alternative fueled school buses including the purchase price and operations and maintenance costs. The State Energy Office shall also review the costs for any associated

fueling infrastructure necessary to support the operation and maintenance of the school buses that use the alternative fuels evaluated in the study. In its review of associated fueling infrastructure, the State Energy Office shall identify opportunities for the use of existing commercial or public fueling infrastructure, the potential for leveraging State funds with other public or private monies in order to develop new fueling infrastructure, and the duration of public-private fuel contracts in order to minimize the costs to the State. Based on the results of the study, the State Energy Office shall make recommendations on which fuel or fuel mix and types of alternative fueled school buses would be appropriate for local school administrative units, taking into account costs, geographic considerations, population densities, and access to available infrastructure.

SECTION 1.(c) The Task Force shall report the results of its study and any recommendations to the Joint Legislative Commission on Energy Policy on or before December 1, 2012.

...

PART II. DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER TON PICKUP TRUCKS AND NEW ONE-HALF TON PICKUP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE AND EVALUATE ALTERNATIVE FUELS FOR THE REMAINDER OF THE DEPARTMENT'S FLEET

SECTION 2.(a) Notwithstanding any other provision of law and with funds available, beginning July 1, 2013, twenty-five percent (25%) of the new three-quarter ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(b) Notwithstanding any other provision of law and with funds available, beginning July 1, 2015, seventy-five percent (75%) of the new three-quarter ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(c) Notwithstanding any other provision of law and with funds available, beginning July 1, 2014, twenty-five percent (25%) of the new one-half ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(d) Notwithstanding any other provision of law and with funds available, beginning July 1, 2016, seventy-five (75%) of the new one-half ton pickup trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 2.(e) Notwithstanding any other provision of law and with funds available, the Department of Transportation shall ensure that at least fifty percent (50%) of the fuel used annually by the Department's three-quarter ton pickup trucks and one-half ton pickup trucks that are capable of operating on both compressed natural gas (CNG) and gasoline shall be compressed natural gas (CNG).

SECTION 2.(f) Beginning January 1, 2014, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations

Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section. The first report shall include an evaluation of alternative fuels as defined in G.S. 143-58.4 and alternative fueled vehicles to replace the remaining pickup trucks in the Department's fleet.

PART III. ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS

SECTION 3.(a) The Department of Transportation may operate an electric vehicle charging station at State-owned rest stops along the highways only if all of the following conditions are met:

(1) The electric vehicle charging station is accessible by the public.

(2) The Department has developed a mechanism to charge the user of the electric vehicle charging station a fee in order to recover the cost of electricity consumed, the cost of processing the user fee, and a proportionate cost of the operation and maintenance of the electric vehicle charging station.

SECTION 3.(b) If the cost of the electricity consumed at the electric vehicle charging stations cannot be calculated as provided by subsection (a) of this section, the Department shall develop an alternative mechanism, other than electricity metering, to recover the cost of the electricity consumed at the vehicle charging station.

SECTION 3.(c) The Department may consult with other State agencies and industry representatives in order to develop the mechanisms for cost recovery required pursuant to subsection (a) of this section.

SECTION 3.(d) Beginning January 1, 2013, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section.

PART IV. AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW

SECTION 4.(a) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 2(a), 2(b), and 2(c) of Senate Bill 709 read as rewritten:

"**SECTION 2.(a)** Development of ~~Governors'~~ Regional Interstate Offshore Energy Policy Compact. – The Governor ~~is directed to commence~~shall lay the groundwork for development of a regional energy ~~compact~~ strategy by working with the governors of South Carolina and Virginia ~~in order~~ to develop recommendations for creation and implementation of a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor is authorized to work directly with each of the three states' General Assemblies, Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state

and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

"**SECTION 2.(b)** No later than three months after the effective date of this act, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report ~~her~~ the Governor's final recommendations for the ~~three-state energy compact~~regional energy strategy to the ~~Joint Regulatory Reform Committee no later than May 1, 2012.~~ President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than December 31, 2012.

"**SECTION 2.(c)** In addition to the provisions in Sections 2(a) and 2(b) of this act, the Governor is strongly encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States."

SECTION 4.(b) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 3(a) and 3(b) of Senate Bill 709 are repealed.

SECTION 4.(c) If Senate Bill 709 of the 2011 Regular Session becomes law, G.S. 113B-3, as amended by Senate Bill 709, reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Jobs Council shall consist of 12 members to be appointed as follows:

(1) Repealed.

(2) Repealed.

(2a) The Secretary of Commerce.

(3) Eleven public members who are citizens of the State of North Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy Jobs Council shall be made by ~~October 1, 2011,~~September 1, 2012, and the appointed members shall serve four-year terms.

Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy Jobs Council shall have the qualifications and shall be appointed as follows:

(1) One member shall be a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be a geologist experienced in ~~offshore~~ natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

(3) One member shall be a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore of the Senate.

(4) One member shall be an energy economist or a person with experience in the financing or business development or an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall be a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore of the Senate.

(6) One member shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of energy, other than wind energy, to be appointed by the Speaker of the House of Representatives.

(8) One member who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) One member shall be a representative with experience in wind energy, to be appointed by the Governor.

(11) One member shall be a representative with experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) One member shall be ~~involved with the biofuels industry,~~ experienced in energy policy, to be appointed by the President Pro Tempore of the Senate."

PART V. EFFECTIVE DATE

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

HOUSE BILL 177:
Clean Energy Transportation Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 5, 2012
Introduced by:	Reps. Samuelson, McElraft	**Prepared by:**	Jennifer Mundt
Analysis of:	PCS to Second Edition H177-CSTA-4 [v.5]		Legislative Analyst

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 177 would:

- ***Create an interagency task force directed to study the feasibility and desirability of advancing the use of alternative fuels by local school administrative units and the development of associated fueling infrastructure.***
- ***Direct the Department of Transportation to purchase new ¾ ton and ½ ton pick-up trucks that operate on CNG or CNG and gasoline and evaluate other alternative fuel vehicles for the remainder of the Department's fleet of pickup trucks.***
- ***Establish criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways.***
- ***Amend the Energy Jobs Act of 2011 should it become law.***

BILL ANALYSIS: The PCS for House Bill 177 would:

Section 1: Direct the State Energy Office in the Department of Commerce, in consultation with the Departments of Administration and the Department of Public Instruction, and other agencies as applicable, to create an interagency task force responsible for studying the feasibility and desirability of advancing the use of alternative fuels by local school administrative units for school transportation purposes. As part of its study, the Task Force must perform a cost-benefit analysis on each alternative fuel and review the costs of associated fueling infrastructure necessary to support the operation and maintenance of the school buses that use the alternative fuels evaluated in the study. The Task Force must report the results of its study, including any recommendations, to the Joint Legislative Commission on Energy Policy on or before December 1, 2012.

Section 2: direct the Department of Transportation to purchase new ¾ ton and ½ ton pick-up trucks that operate on either CNG or CNG and gasoline by establishing a schedule for the purchase of CNG or bi-fuel pickup trucks. This section also directs the Department to evaluate alternative fuels and alternative fueled vehicles to replace the remaining pickup trucks in the Department's fleet

Section 3: establish the following criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways:

- The charging stations must be accessible by the public.
- The Department of Transportation must develop a mechanism to charge the user of the charging station a fee to recover the costs of the electricity consumed, processing fees, and operations and maintenance.

Section 4: amend the Energy Jobs Act of 2011 if it were to become law as follows:

- Directs the Governor to develop a regional strategy with the Governors of South Carolina and Virginia for the exploration, development, and production of commercially viable federal and

state offshore energy resources within the three-state region and report on the strategy to the President Pro Tempore and the Speaker of the House.

- Amends some of the qualifications and the timeframe for appointments made to the Energy Jobs Council.

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

H177-SMTA-12(CSTA-4) v2

SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027 [redacted]

DATE: 6-5 TIME: 11 AM

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

	Page Name	Hometown	Sponsoring Senator
1	Allyson Wilson	Burlington	Rick Gunn
2	Rebecca Harris	Charlotte, NC	Bob Rucho
3	Taylor Parrish	Angier, NC	Rouzer
4	Richard Whelan	High Point	Don Vaughn
5	Peter Ojo	Fayetteville	Eric Mansfeild
6	Alyssa Smith	Morganton	Warren Daniel
7	Julia Chams	Raleigh	Senator Dan Blue
8	Ryan Williams	Lavinburg	Purcell
9	Catherine Blalock	Asheville	Nesbitt
10	Bellamy Harden	Raleigh	Tillman

Do not add names below the grid.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jason Godaire	Nurse of the Day - NCNA Southeastern Regional Med Ctr Lumberton
Kara Weishaar	SA
Ashley Perkinson	Perkinson Law
Pamela Williams	Clean Water for NC
Corey Jones	Projects On Of NC
Michael R. Thompson	Dominion NC Power
Kathryn Rudbrune	Stokes Co.
Donna M. Petree	Stokes County No Fracking In Stokes
C. McGinn	Lenoir Cty
Lake Cranford	Cumnock Preservation Assoc
DIANA HALES	CHATHAM COUNTY - DEEP RIVER

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 5, 2012 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sherry Hill	Constituent of Senator Stevens WAKE COUNTY - 27511
Pat & Paul Kelly	Constituent of Senator Hunt Wake Co. 27614 — Care of Creation ministry St. Francis of Assisi
Lib Hatchby	Women's International League for Peace & Freedom (WILPF)
Sabrina Shaffer Colvard	Stokes & Rockingham Ctys. Against Fracking
ANGA AUSELLINE Nicholson	SELC
Marisa Berry	SELC
Karen Bearden	350.org volunteer
Sarah Wilson	SELC intern
Mackenzie Lawson	SELC
Susanna Hailey	K&L Gates
WC Tucker	Weyerhaeuser Co.

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Senate Commerce Committee — June 5, 2012

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NAME	FIRM OR AGENCY AND ADDRESS
Bill Wadkins	NC-AP1
Susan Hunter	Fonville Morisey Realty, Wake Co.
Thom Allen	FCEA
Gail Duncan	Opposed to fracking citizen
Jayson Duncan	Opposed to Fracking citizen of NC
Jake Cashion	NC Chamber
S Watson	NCUC
Molly D	Sierra Club
Grace Williamson	NC League of Conservation Voters
Ethan Case	NC LCV
John Tucker	Moore & Van Allen

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Senate Commerce Committee — June 5, 2012

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NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	Weyerhaeuser
Frank Rackley	Weyerhaeuser Company
Aaron Guyton	NCOAA
Tony Adams	NCOAA
Veronica Butler Shingleton	Governors Office
[illegible]	Commerce
William Worten	Gov's Office
Susanna Davis	Gov Office
Lynn Porter	350 nc
Bill O'Donnell	PEFNC
Bob Joyce	Sanford Chamber

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Senate Commerce Committee — June 5, 2012

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NAME	FIRM OR AGENCY AND ADDRESS
CHRIS DILLON	make
Trina Ozer	NCDENR
Diana Kees	DENR
Jaz Tunnell	PNCo
Gabriell Vives	NCDENR
Katie Spidalieri	NCDENR.
Aimee Schmidt	Silver Lining Institute
Clare FitzGerald	DENR
Kan Barness	DENR
[illegible]	NCIC
Tyler Nethers	The Farmery

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Senate Commerce Committee — June 5, 2012

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Andy Wilkison	Village of Pinehurst, NC
Mayor Darryl Moss	City of Creedmoor
Erin Wynia	NCLM
Reggie Holley	The Longmire Group
John Mellott	MWC LLC
GEORGE McRAE	citizen & voter
Laura Young	citizen & voter
Laura Johnson	citizen of Lee County
Margaret Hartzell	Environment North Carolina
Sarah Grantham	Food and Water Watch
Hope Taylor	Clean Water for NC

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Senate Commerce Committee — June 5, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nancy C Bryant	NC Sierra Club etc
Jeffrey Ollison	Food + Water Watch
Cassidy Nolan	NCCN
Dan Conrad	NCCN
John Murawski	NFO
Patti Dunlap	STOKES County
Jennifer Muller	CWFNC
Sara Chandler	Stokes Co.
Will Morgan	NC Sierra
Judith DAVIS	CITIZEN (Food+Water Watch) Raleigh NC * Volunteer
Latonia Strickland	NCACC

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Senate Commerce Committee — June 5, 2012

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Amy Fullbright	K&L Gates
LEW EBERT	NC CHAMBER
Bo Heath	McGuireWoods
DAVID BARNES	PS
Michael James	NGGA
Caitlan Tart	Longmire Group
Lynne Weaver	DC DOT
Jennifer Epperson	NC DOJ
Rick Zechini	Ring Fenwick
Penny Huffman	School of Gov
[illegible]	ESS
Kathy Hawke	DMV

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 5, 2012
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Steve Brewer	CTL
David Elmore	Moore & Van Allen
Tommy Suier	Moore and Van Allen
Kerri Burno	NWC
Drew Hargrove	NCDENR
Karen Bell Chandler	1196 Davis Chapel Church Rd Walnut Cove, NC 27052
	no fracking in Stokes
SALLY KOST	Chatham County Commissioner 1101 New Hope Ch RD Apex 27523
Robin Smith	DENR
	MSC
GARY SALAMIDO	NC Chamber

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2012

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NAME	FIRM OR AGENCY AND ADDRESS
Amanda Dixon	Sen. Hise's Office
[illegible]	Harrington
Derek Graham	NCDPI
BRUCE THOMPSON	PARKER POE
DOUG HEIRON	WILLIAMS MULLEN
Heather Barrett	Williams Mullen
Scott Denton	NCPTA
Debbie Roberson	Durham Public Schools

SA 20

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 5, 2012
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rob Jackson	Duke Univ.
Cody Thomas	NCAR
Caroline Cobb	NCAR

SENATE COMMERCE COMMITTEE
Thursday, June 7, 2012 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 7, 2012, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Peter Ojo of Fayetteville, Catherine Blalock of Asheville and Bellamy Harden of Raleigh, Bryles Cutts and Beverly Foster of Henderson, Charles Keen of Raleigh, Ryan Phillips of Pinehurst, Tristan Gordon of Monroe and Meghan Breden of Wilkesboro served as pages. Senator Brown chaired.

S.B. 123 – Eliminate Motor Vehicle Safety Inspections

This bill was removed from the agenda.

S.B. 932 – Union County Construction Methods

Senator Tucker was recognized to explain the bill. It would authorize Union County to construct law enforcement and human services facilities using design-build delivery methods. Senator Hise offered an amendment which specifies the jail and dispatch center. Senator Newton moved to adopt the amendment and the motion carried. Senator Westmoreland moved to roll the amendment and bill into a proposed committee substitute (PCS) and report it favorably. The motion carried. A copy of the bill and the amendment is attached.

H.B. 237 – 2012 Workers Comp Amends

Representative Folwell was recognized to explain the bill. Senator Blake moved to adopt the PCS for discussion and the motion carried. The PCS would amend the laws related to information that may be shared by the North Carolina Rate Bureau with the North Carolina Industrial Commission. It also makes a number of clarifying and other changes to Chapter 97 of the General Statutes (the Workers' Compensation Act). Senator Newton moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 799 – Licensure by Endorsement/Military/Spouses

Representative Killian and Representative Martin were recognized to explain the bill. The bill would allow military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive occupational licenses in this State. The applicants would have to meet requirements, either in the military or in another jurisdiction, that are substantially equivalent to or exceed the State requirements for licensure. State occupational licensing boards would also be able to issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued. Senator Newton offered a technical amendment which updates a change in Legislative Research Commission study report due date and moved for its adoption. The motion

carried. Senator Stein moved to adopt the bill as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

S.B. 815 – Reform Workforce Development

Senator Hartsell was recognized to explain the bill. It would amend the State's workforce development laws, modifies the membership of the Commission on Workforce Development and establishes the Joint Legislative Workforce Development System Reform Oversight Committee. John Turcotte, the Program Evaluation Division director, was recognized to further explain the bill and answer questions. Senator Blue moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 177 – Clean Energy Transportation Act.

Senator Rucho was recognized to explain the bill. Senator Newton moved to adopt the PCS for discussion and the motion carried. Jennifer Mundt, an attorney with the Research Division, was recognized to explain the PCS section by section. The PCS would create an interagency task force directed to study the feasibility and desirability of advancing the use of alternative fuels by State agencies and the development of associated fueling infrastructure. It also establishes criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways and amends the Energy Jobs Act of 2011 should it become law. Senator Newton moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 462 – Contingency Contracts for Audits/Assessments

Senator Gunn was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would prohibit the Department of Revenue, local governments, and the Treasurer's office from using third-party contractors paid on a contingent fee basis for audit and assessment purposes. Senator Newton offered an amendment which prohibits the renewal of contingency fee-based contracts after July 1, 2012. Senator Newton moved for the adoption of the amendment and the motion carried. Andy Ellen, representing the Retail Merchants Association, was recognized to explain the current process. Senator Clodfelter moved to adopt the PCS as amended and the motion carried. A copy of the PCS, the summary and the amendment is attached.

The meeting adjourned at 11:58 AM.

Senator Harry Brown, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

Corrected: S932 - Union County Construction Methods has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 7, 2012	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 177	Environmental Technical Corrections 2011.	Representative McElraft Representative Samuelson
HB 237	Economic Impact/Regulatory Legislation.	Representative Folwell Representative Rhyne, Jr. Representative Dollar Representative McElraft
HB 462	Study Business Opportunity & Franchise Sales.	Representative McCormick
HB 799	Licensure by Endorsement/Military/Spouses.	Representative Martin Representative Killian
SB 123	Eliminate Motor Vehicle Safety Inspections.	Senator Bingham
SB 815	Reform Workforce Development.	Senator Hartsell
SB 932	Union County Construction Methods.	Senator Tucker

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

Corrected: HB 462 - Study Business Opportunity & Franchise Sales has been added to the agenda.

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HB 462	Study Business Opportunity & Franchise Sales.	Representative McCormick
HB 799	Licensure by Endorsement/Military/Spouses.	Representative Martin Representative Killian
SB 123	Eliminate Motor Vehicle Safety Inspections.	Senator Bingham
SB 815	Reform Workforce Development.	Senator Hartsell

Senator Harry Brown, Chair

Principal Clerk ____
Reading Clerk ____

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AND
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HB 799	Licensure by Endorsement/Military/Spouses.	Representative Martin Representative Killian
SB 123	Eliminate Motor Vehicle Safety Inspections.	Senator Bingham
SB 815	Reform Workforce Development.	Senator Hartsell

Senator Harry Brown, Chair

Senate Commerce Committee
Thursday, June 7, 2012, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 177	Environmental Technical Corrections 2011.	Rep. McElraft Rep. Samuelson
HB 237	Economic Impact/Regulatory Legislation.	Rep. Folwell Rep. Rhyne Rep. Dollar Rep. McElraft
HB 462	Study Business Opportunity & Franchise Sales.	Rep. McCormick
HB 799	Licensure by Endorsement/Military/Spouses.	Rep. Martin Rep. Killian
SB 123	Eliminate Motor Vehicle Safety Inspections.	Sen. Bingham
SB 815	Reform Workforce Development.	Sen. Hartsell
SB 932	Union County Construction Methods.	Sen. Tucker

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, June 07, 2012

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

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

H.B. **462** Study Business Opportunity & Franchise Sales.

Draft Number:	11369
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B. **799** Licensure by Endorsement/Military/Spouses.

Draft Number:	70302
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

H462 – Sen. Gunn
H799 - Sen. Brown

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, June 07, 2012

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

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

S.B. **932** Union County Construction Methods.

Draft Number:	85297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

S932 – Sen. Tucker

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, June 07, 2012

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **177** Environmental Technical Corrections 2011.

Draft Number:	30632
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

H177 – Sen. Rucho

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Harry Brown, Chair

Thursday, June 07, 2012

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

FAVORABLE

S.B. **815** Reform Workforce Development.
Sequential Referral: None
Recommended Referral: None

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

H.B. **237** Economic Impact/Regulatory Legislation.
Draft Number: 30631
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

S815 – Sen. Hartsell
H237 – Sen. Brown

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 932*

Short Title:	Union County Construction Methods.	(Local)
Sponsors:	Senator Tucker (Primary Sponsor).	
Referred to:	Commerce.	

May 31, 2012

A BILL TO BE ENTITLED

AN ACT AUTHORIZING UNION COUNTY TO CONSTRUCT LAW ENFORCEMENT AND HUMAN SERVICES FACILITIES USING DESIGN-BUILD DELIVERY METHODS.

The General Assembly of North Carolina enacts:

SECTION 1. Union County may contract for the design and construction or design, construction, and operation of law enforcement facilities including, without limitation, a jail and emergency dispatch center and human services facilities including, without limitation, social services and public health buildings, without being subject to the requirements of Article 3D (Procurement of Architectural, Engineering, and Surveying Services) or Article 8 (Public Contracts) of Chapter 143 of the General Statutes. The authorization includes, if deemed appropriate by the Union County Board of Commissioners, the use of the single-prime contractor method of design and construction, the design-build or design-build-operate method of construction, or a request for proposals and negotiation as an alternative design and construction method.

SECTION 2. Pursuant to the authority to conduct a request for proposals and negotiation as an alternative design and construction method, Union County may enter into build-to-suit capital leases of real or personal property for use as law enforcement facilities or human services facilities. For purposes of this act, (i) the term "build-to-suit capital lease" means a capital lease, as defined by generally accepted accounting principles, regardless of how the parties describe the agreement, which provides for the construction of new facilities or the renovation of existing facilities by a private developer at a cost estimated to be greater than three hundred thousand dollars ($300,000); and (ii) the term "private developer" means the entity with which the Board of Commissioners enters into a build-to-suit capital lease under the provisions of this act. A build-to-suit capital lease may provide that the private developer is responsible for providing or contracting for construction, repair, or renovation work. The lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a build-to-suit capital lease. The Board of Commissioners may also enter into a separate agreement or a series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a build-to-suit capital lease. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 3D or Article 8 of Chapter 143 of the General Statutes.

SECTION 3. In recognition of the potential economic and technical utility of build-to-suit capital leases, which may include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods

of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

(1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.
(2) Facility programming, planning, and design, including both architectural and engineering services.
(3) Qualification and prequalification of contractors and subcontractors.
(4) Construction and construction management.
(5) Financing.
(6) Facility maintenance and repairs.
(7) Energy usage guaranties.
(8) Transfer of ownership of the leased property to Union County at the end of the lease term.
(9) Any other guaranties, products, and services the Board of Commissioners deem appropriate.

SECTION 4. The Board of Commissioners may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements may include, without limitation, provisions for each of the following: (i) site selection, land acquisition, and site preparation, including services such as wetlands delineation, archaeological review, and State and local government land-use permitting; and (ii) building programming and design, including both architectural and engineering services.

SECTION 5. Notwithstanding any provisions of law to the contrary, the Board of Commissioners may, pursuant to the provisions of G.S. 160A-267, and without limitation as to value of the interest conveyed or the consideration received, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of the facilities subject to a build-to-suit capital lease. The Board of Commissioners may subject the property to any covenants, conditions, or restrictions it deems necessary to carry out the purposes of this act. The facilities subject to a build-to-suit capital lease may be constructed on real property owned by Union County or real property owned by the private developer.

SECTION 6. A build-to-suit capital lease shall also be subject to the following requirements:

(1) The lease shall not contain a nonsubstitution clause that restricts the right of the Board of Commissioners to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.
(2) No deficiency judgment may be rendered against Union County or the Board of Commissioners in any action for breach of a contractual obligation in a lease authorized by this act, and the taxing power of Union County is not and may not be pledged directly or indirectly to secure any moneys due under a lease authorized by this act. A build-to-suit capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the Board of Commissioners.
(3) A build-to-suit capital lease entered into pursuant to this act is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it meets the standards provided in G.S. 159-148(a)(2) and G.S. 159-148(a)(3). For purposes of determining

whether the standards provided in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar ($500,000) threshold shall apply.

(4) The Board of Commissioners, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guaranty to cover any other guaranties, products, or services to be provided by the private developer. In addition, the Board of Commissioners may require that the private developer (i) provide an irrevocable letter of credit for the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total cost of the improvements that are the subject of the build-to-suit capital lease; and (ii) maintain the letter of credit throughout the construction of the project and for the succeeding six-month period.

SECTION 7. Union County shall request proposals from and interview at least three design-build teams, design-build-operate teams, or private developers, as appropriate, that have submitted proposals for a project authorized under the provisions of this act. If three proposals are not received and the project has been publicly advertised for a minimum of 30 days, the County may proceed with the proposal or proposals received. If it determines to proceed, the Board of Commissioners shall award the contract to the best qualified contractor or private developer for the project as deemed by the Board of Commissioners, in its sole discretion, to be in the county's best interests under all the circumstances, taking into account (i) the knowledge, skill, and reputation of the contractor or private developer and its associated persons; (ii) the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; (iii) occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; (iv) any other factors and information set forth in the request for proposals that the county determines to have a material bearing on the ability to evaluate any proposal; and (v) any other factors the Board of Commissioners deems relevant.

SECTION 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 932*

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

S932-ASU-17 [v.1]

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

Date _____,2012

Senator _____

moves to amend the bill on page 1, lines 8-9, by rewriting the lines to read:
"a jail and emergency dispatch center and facilities ancillary to law enforcement, and human services facilities and facilities ancillary to human services, without being subject to the requirements of Article"; and

on page 3, lines 16 and 17, by replacing "three" with "five" each time it appears; and

on page 3, line 30, by deleting "law." and substituting "law and expires five years after the effective date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

_____ ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 237
PROPOSED SENATE COMMITTEE SUBSTITUTE H237-PCS30631-LRf-28

Short Title: 2012 Workers' Compensation Amendments. (Public)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE NORTH CAROLINA RATE BUREAU SHARE WITH THE NORTH CAROLINA INDUSTRIAL COMMISSION INFORMATION ON THE STATUS OF WORKERS' COMPENSATION INSURANCE COVERAGE ON EMPLOYERS IN THIS STATE AND MAKING CLARIFYING, CONFORMING, AND OTHER CHANGES RELATING TO THE WORKERS' COMPENSATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-36-16 reads as rewritten:

"**§ 58-36-16. Bureau to share information with Department of ~~Labor.~~Labor and North Carolina Industrial Commission.**

The Bureau shall provide to the Department of Labor and the North Carolina Industrial Commission information from the Bureau's records indicating each employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance and the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool pursuant to G.S. 58-36-1. Information provided to the Department of Labor and the North Carolina Industrial Commission with respect to experience rate modifiers shall include the name of the employer and the employer's most current intrastate or interstate experience rate modifier. The information provided to the Department and the Commission under this section shall be confidential and not open for public inspection. The Bureau shall be immune from civil liability for ~~erroneous information released by the Bureau~~ releasing information pursuant to this section, even if the information is erroneous, provided ~~that~~ the Bureau acted in good faith and without malicious or wilful intent to harm in releasing the ~~erroneous~~ information."

SECTION 1.(b) Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-17. Bureau to share information with the North Carolina Industrial Commission.**

The Bureau shall provide to the North Carolina Industrial Commission information contained in the Bureau's records indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The North Carolina Industrial Commission shall take such steps, including obtaining software or software licenses, as are necessary to be able to receive and process such information from the Bureau. The records provided to the North Carolina Industrial

Commission under this section shall be confidential and shall not be public records as that term is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information provided pursuant to this section only to carry out its statutory duties and obligations under The North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information."

SECTION 2. G.S. 97-25.6 reads as rewritten:

"**§ 97-25.6. Reasonable access to medical information.**

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports, and information necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report, or information that ~~is:~~is any of the following:

(1) ~~restricted~~ Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is ~~sought;~~sought.

(2) ~~reasonably~~ Reasonably related to the injury or disease for which the employee claims ~~compensation; or~~compensation.

(3) ~~related~~ Related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

(1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. ~~The~~ Upon the request of the employee, the employer shall provide the employee with a copy of any records received in response to this request within 30 days of its receipt by the employer.

(2) Written communications with health care providers. – An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:

a. The diagnosis of the employee's ~~condition;~~condition.

b. The appropriate course of ~~treatment;~~treatment.

c. The anticipated time that the employee will be out of ~~work;~~work.

d. The relationship, if any, of the employee's condition to the ~~employment;~~employment.

e. Work restrictions resulting from the ~~condition;~~condition, including whether the employee is able to return to the employee's employment

with the employer of injury as provided in an attached job description.

f. The kind of work for which the employee may be ~~eligible;~~eligible.

g. The anticipated time the employee will be ~~restricted; and~~restricted.

h. Any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.

(3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.

b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

(1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.

(2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.

(3) Upon consent of the employee or in the absence of the employee's timely ~~response,~~ objection, the employer may submit the additional information directly to the health care provider.

(4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. If the employee does not file with the Industrial Commission a request for a protective order within the time period set forth in subdivision (2) of subsection (d) of this section, the employer may submit the additional information directly to the health care provider. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by

initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

(f) Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought, or with whom oral communication is sought, or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

(g) Other forms of communication with a health care provider may be authorized by any of the following:

(1) A valid written authorization voluntarily given and signed by the employee.

(2) An agreement of the parties.

(3) An order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this ~~section.~~section or through other discovery authorized by the rules of the Commission.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish ~~annually~~ an appropriate ~~medical~~ fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

(j) No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

(k) For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator; and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee."

SECTION 3. G.S. 97-26 reads as rewritten:

"**§ 97-26. Fees allowed for medical treatment; malpractice of physician.**

(a) Fee Schedule. – The Commission shall adopt by rule a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make ~~revisions pursuant to the provisions of this Article.~~revisions.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

~~Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be~~

~~held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.~~

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the State Health Plan for Teachers and State Employees (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ("CPT") codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and resource-based relative-value system ("RBRVS") payments. The Commission may consider statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

~~An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.~~

(b) Hospital Fees. – Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be a reasonable fee determined by the ~~Commission.~~ Commission and adopted by rule. Effective September 16, 2001, through June 30, 2002, the fee shall be the following amount unless the Commission adopts a different fee schedule in accordance with the provisions of this section:

(1) For inpatient hospital services, the amount that the hospital would have received for those services as of June 30, 2001. The payment shall not be more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage for payment of inpatient DRG claims that was in effect as of June 30, 2001.

(2) For outpatient hospital services and any other services that were reimbursed as a discount off of charges under the State Plan as of June 30, 2001, the amount calculated by the Commission as a percentage of the hospital charges for such services. The percentage applicable to each hospital shall be the percentage used by the Commission to determine outpatient rates for each hospital as of June 30, 2001.

(3) For any other services, a reasonable fee as determined by the Industrial Commission.

~~Notwithstanding any other provisions of law, the Commission's determination of payment rates under this subsection shall:~~

~~(1) Comply with the procedures for adoption of a fee schedule established in G.S. 97-26(a);~~

~~(2) Include publication of the proposed payment rate, and a summary of the data and calculations on which the rate is based at least 90 days before the proposed effective date;~~

~~(3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and~~

~~(4) Be deemed to constitute a final permanent rule under Article 2A of Chapter 150B for purposes of judicial review under Article 4 of that Chapter.~~

The explanation of the fee schedule change that is published pursuant to G.S. 150B-21.2(c)(2) shall include a summary of the data and calculations on which the fee schedule rate is based.

A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payers.

(c) Maximum Reimbursement for Providers Under Subsection (a). – Each health care provider subject to the provisions of subsection (a) of this section shall be reimbursed the amount specified under the fee schedule unless the provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology. In any instance in which neither the fee schedule nor a contractual fee applies, the maximum reimbursement to which a provider under subsection (a) is entitled under this Article is the usual, customary, and reasonable charge for the service or treatment rendered. In no event shall a provider under subsection (a) charge more than its usual fee for the service or treatment rendered.

(d) Information to Commission. – Each health care provider seeking reimbursement for medical compensation under this Article shall provide the Commission information requested by the Commission for the development of fee schedules and the determination of appropriate reimbursement.

(e) When Charges Submitted. – Health care providers shall submit charges to the insurer or managed care organization within 30 days of treatment, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Commission. If an insurer or managed care organization disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges in accordance with this Article or its contractual arrangement.

(f) Repeating Diagnostic Tests. – A health care provider shall not authorize a diagnostic test previously conducted by another provider, unless the health care provider has reasonable grounds to believe a change in patient condition may have occurred or the quality of the prior test is doubted. The Commission may adopt rules establishing reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations. A health care provider that violates this subsection shall not be reimbursed for the costs associated with administering or analyzing the test.

(g) Direct Reimbursement. – The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

(g1) Administrative Simplification. – The applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this subsection.

(h) Malpractice. – The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such.

(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article."

SECTION 4. G.S. 97-26.1 reads as rewritten:

"§ 97-26.1. Fees for medical records and reports; expert ~~witnesses.~~witnesses; communications with health care providers.

The Commission may establish maximum fees for the following when related to a claim under this Article: (i) the searching, handling, copying, and mailing of medical records, (ii) the preparation of medical reports and narratives, ~~and~~ (iii) the presentation of expert testimony in a Commission ~~proceeding.~~proceeding, and (iv) the time spent communicating with the employer or employee pursuant to G.S. 97-25.6(i)."

SECTION 5. G.S. 97-27(b) reads as rewritten:

"(b) In any case arising under this Article in which the employee is dissatisfied with the percentage of permanent disability as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician of the employee's choosing who is licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by the employee. That physician shall be paid by the employer in the same manner as health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining the examination shall be paid by the employee."

SECTION 6. G.S. 97-29(b) reads as rewritten:

"(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when a claim has been deemed compensable following a hearing pursuant to G.S. 97-84, ~~an employee proves by a preponderance of the evidence that the employee is unable to earn the same wages the employee had earned before the injury, either in the same or other employment,~~ the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section."

SECTION 7. G.S. 97-32.2(a) reads as rewritten:

"(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim, regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational ~~potential.~~potential, except vocational rehabilitation services may not be required if the employee is receiving benefits pursuant to G.S. 97-29(c) or G.S. 97-29(d). If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of the employee's average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services, including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation."

SECTION 8. This act is effective when it becomes law and applies to claims filed on or after that date.

HOUSE BILL 237:
2012 Workers' Compensation Amendments

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2012
Introduced by:	Reps. Dollar, Rhyne, McElraft, Folwell	**Prepared by:**	Phyllis Pickett Staff Attorney and Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition H237-CSLRf-28		

SUMMARY: The Proposed Committee Substitute completely rewrites HB237. The PCS would amend the laws related to information that may be shared by the North Carolina Rate Bureau with the North Carolina Industrial Commission. It also makes a number of clarifying and other changes to Chapter 97 of the General Statutes (the Workers' Compensation Act).

The act would be effective when it becomes law and applies to claims filed on or after that date.

BILL ANALYSIS:

Section 1(a) amends G.S. 58-36-16.

Current law: – the North Carolina Rate Bureau (Rate Bureau) must provide information to the Department of Labor (DOL) regarding an employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance as well as the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool under G.S. 58-36-1. The information is confidential in the hands of the DOL and is not open for public inspection. The Rate Bureau is immune from civil liability for releasing the information, even if the information is erroneous as long as the Rate Bureau acted in good faith and without malicious or willful intent to harm.

Bill Analysis: – the PCS requires the Rate Bureau to provide the same information to the North Carolina Industrial Commission (Commission), extends to same protections against disclosure for the information received by the Commission, and grants the same immunities to the Rate Bureau.

Section 1(b) enacts a new statute that requires the Rate Bureau to provide the Commission with information indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The Commission must obtain any software or software licenses necessary to receive and process the information from the Bureau. The information will be confidential and not a public record. The Commission is restricted to using the information only for the purpose of carrying out its statutory duties. The Rate Bureau would be immune from civil liability for releasing the information if it acted in good faith and without malicious or willful intent, even if the information is erroneous.

Section 2 makes a number of changes to G.S. 97-25.6 regarding an employer's access to an employee's medical information. The clarifying and substantive changes are as follows:

Current law: An employer may request medical records, information not contained in the medical records, and oral communications to obtain information not contained in the medical records or not available through written communication. The employer must provide contemporaneous written notice to the employee of requests for medical records and must also provide the employee with a copy of the records received from the health care provider.

Bill Analysis: Under the PCS, an employer would have to provide the employee with a copy of the records or written response, but only if the employee requests copies of the same.

Current law: An employer may request certain additional information from the employee's health care provider without first obtaining the employee's consent. The additional information that may be requested includes a diagnosis of the employee's condition, the appropriate course of treatment, when the employee will be able to return to work, the relationship of the employee's condition to the employment and any work restrictions resulting from the condition.

Bill Analysis: Under the PCS, an employer could request information concerning whether the employee is able to return to the employee's employment based upon the employee's job description.

Current law: An employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's health care provider. The employer must first notify the employee in writing and the employee has 10 business days to either consent or object to the employer's proposed communication. If the employee objects, the employee may request a protective order from the Commission.

Bill Analysis: Under the PCS, if the employee does not seek a protective order within the specified 10 business days, the employer may submit the additional information directly to the health care provider.

Current law: G.S. 97-25.6(g) allows additional forms of communication, but only as authorized by the Commission.

Bill Analysis: Under the PCS, additional forms of communication may be used by agreement of the parties or by a voluntary authorization signed by the employee. The Commission may also adopt rules authorizing other forms of discovery.

Section 3 relates to the rule making process by which the Commission can set the fees to be paid by insurers for both medical care and hospital care. The current law provides a process that is differs from the standard process under the Administrative Procedures Act (APA). The PCS would require the Commission to use the standard process.

Section 4 authorizes the Commission to set a fee to compensate a health care provider for the time spent communicating with the employer or the employee.

Section 5 amends G.S. 97-27(b) to provide that in cases where an employee is dissatisfied with the percentage of permanent disability provided under G.S. 97-31, any travel expenses incurred by an employee to obtain another examination shall be paid by the employee.

Section 6 amends G.S. 97-29(b) which determines when an employee qualifies for temporary total disability.

Current law: G.S. 97-29(b) provides that an employee qualifies for temporary total disability when a claim is compensable because the employer admits to the employee's right to compensation (G.S. 97-18(b), is paid without prejudice because the employer is uncertain whether the claim is compensable (G.S. 97-18(d)), is agreed by the parties (G.S. 97-82), or when the employee proves by a preponderance of the evidence that the employee is no longer able to earn the same wages that the employee earned before the injury (in the same or other employment).

Bill Analysis: under the PCS, the incapacity may be established when a claim is deemed compensable by the Commission following a hearing under G.S. 97-84.

Section 7 amends G.S. 97-32.2 which establishes the requirements for vocational rehabilitation services. The PCS would exclude these services if the employee is receiving extended compensation in excess of the 500 week limitation for temporary total disability or if the employee qualifies for permanent total disability.

HOUSE BILL 799
Second Edition Engrossed 6/6/11

Short Title:	Licensure by Endorsement/Military/Spouses.	(Public)
Sponsors:	Representatives Martin and Killian (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Homeland Security, Military, and Veterans Affairs, if favorable, Finance.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW LICENSURE BY ENDORSEMENT FOR MILITARY PERSONNEL AND MILITARY SPOUSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.**

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

(1) Has completed a military program of training, been awarded a military occupational specialty, and performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

(1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for

licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

(5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board."

SECTION 2. Within one year from the effective date of this act, each occupational licensing board regulating an occupation in this State and subject to the provisions of Chapter 93B of the General Statutes shall implement the requirements of G.S. 93B-15.1, as enacted by Section 1 of this act.

SECTION 3. The Legislative Research Commission shall study the issue of allowing licensure by the North Carolina Medical Board for individuals with military training and experience, for military spouses by endorsement, and for temporary licenses for military-trained applicants or military-spouse applicants. The Commission shall make a report

on this issue, including any recommendations or legislative proposals, to the 2012 Regular Session of the 2011 General Assembly upon its convening.

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

HOUSE BILL 799:
Licensure by Endorsement/Military/Spouses

2011-2012 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 7, 2012
Introduced by:	Reps. Martin, Killian	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 799 would allow military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive occupational licenses in this State. The applicants would have to meet requirements, either in the military or in another jurisdiction, that are substantially equivalent to or exceed the State requirements for licensure. State occupational licensing boards would also be able to issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued.***

CURRENT LAW: An "occupational licensing board" means any board established for the primary purpose of regulating the entry of persons into a particular profession and the conduct of persons within the profession that is authorized to issue licenses. Occupational licensing board does not include State agencies staffed by full-time State employees who issue licenses as part of their regular duties.

BILL ANALYSIS: House Bill 799 would require occupational licensing boards to issue occupational licenses to military-trained applicants and military-spouse applicants if the following requirements are met:

- A military-trained applicant must:
  - Complete a military program of training.
  - Be awarded a military occupational specialty.
  - Perform in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure.
  - Engage in the active practice of the occupation in the discharge of official duties for at least two of the five years preceding the date of the application.
  - Not commit any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license.
  - Pay any fees required by the occupational licensing board.
- A military-spouse applicant must:
  - Hold a current license from another jurisdiction that has requirements for licensure substantially equivalent to or exceed the requirements for licensure.
  - Demonstrate competency in the occupation through methods as determined by the occupational licensing board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
  - Not commit any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license.

- Be in good standing and not be disciplined by the agency that had jurisdiction to issue the license.
- Pay any fees required by the occupational licensing board.

Occupational licensing boards would also be authorized to issue temporary practice permits to applicants until a license is granted or a notice to deny a license is issued.

The bill would not apply to the practice of law. The North Carolina Medical Board would not be considered an occupational licensing board under the bill, but the State Board of Education would be considered an occupational licensing board when issuing teacher licenses.

The bill would also direct the Legislative Research Commission to study the issue of allowing licensure by the North Carolina Medical Board in this manner.

EFFECTIVE DATE: The act would be effective when it becomes law. Each occupational licensing board would be required to implement the new statute within one year from the effective date.

H799-SMSU-64(e2) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 799

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

H799-ASU-16 [v.1]

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

Date _____,2012

Senator _____

moves to amend the bill on page 3, lines 1-2, by rewriting the lines to read:
"on this issue, including any recommendations or legislative proposals, to the 2013 Regular Session of the General Assembly upon its convening."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 815*

Short Title:	Reform Workforce Development.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Commerce.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT INITIATING REFORM OF THE WORKFORCE DEVELOPMENT LAWS OF NORTH CAROLINA, MODIFYING THE COMPOSITION OF THE NORTH CAROLINA COMMISSION ON WORKFORCE DEVELOPMENT, AND ESTABLISHING THE JOINT LEGISLATIVE WORKFORCE DEVELOPMENT SYSTEM REFORM COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143B-438.10 reads as rewritten:

"**§ 143B-438.10. Commission on Workforce Development.**

(a) Creation and Duties. – There is created within the Department of Commerce the North Carolina Commission on Workforce Development. The Commission shall have the following powers and duties:

(1) To develop strategies to produce a skilled, competitive workforce that meets the needs of the State's changing economy.

(2) To advise the Governor, the General Assembly, State and local agencies, and the business sector regarding policies and programs to enhance the State's ~~workforce.~~workforce by submitting annually a comprehensive report on workforce development initiatives in the State.

(3) To coordinate and develop strategies for cooperation between the academic, governmental, and business sectors.

(4) To establish, develop, and provide ongoing oversight of the "One-Stop Delivery System" for employment and training services in the State.

(5) To develop a unified State plan for workforce training and development.

(6) To review and evaluate the plans and programs of agencies, boards, and organizations operating federally funded or State-funded workforce development programs for effectiveness, duplication, fiscal accountability, and coordination.

(7) To develop and continuously improve performance measures to assess the effectiveness of workforce training and employment in the State. The Commission shall assess and report on the performance of workforce development programs administered by the Department of Commerce, the Department of Health and Human Services, the Community Colleges

System Office, the Department of Administration, and the Department of Public Instruction in a manner that addresses at least all of the following:

a. Actual performance and costs of State and local workforce development programs.

b. Expected performance levels for State and local workforce development programs based on attainment of program goals and objectives.

c. Program outcomes, levels of employer participation, and satisfaction with employment and training services.

d. Information already tracked through the common follow-up information management system created pursuant to G.S. 96-32, such as demographics, program enrollment, and program completion.

(7a) To issue annual reports that, at a minimum, include the information listed in sub-subdivisions a. through d. of subdivision (7) of this section on the performance of workforce development programs administered by the entities listed in that subdivision. The first annual report shall be delivered to the General Assembly by January 15, 2014.

(8) To submit to the Governor and to the General Assembly by April 1, 2000, and biennially thereafter, a comprehensive Workforce Development Plan that shall include at least the following:

a. Goals and objectives for the biennium.

b. An assessment of current workforce programs and policies.

c. An assessment of the delivery of employment and training services to special populations, such as youth and dislocated workers.

d. Recommendations for policy, program, or funding changes.

(9) To serve as the State's Workforce Investment Board for purposes of the federal Workforce Investment Act of 1998.

(10) To take the lead role in developing the memorandum of understanding for workforce development programs with the Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, and the Department of Administration. The memorandum of understanding must be reviewed at least every five years.

(11) To coordinate the activities of workforce development work groups formed under this Part.

(12) To collaborate with the Department of Commerce on the common follow-up information management system.

(b) Membership; Terms. – ~~The~~ Effective January 1, 2013, the Commission on Workforce Development shall consist of ~~38~~25 members appointed as follows:

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

(2) The Governor shall appoint ~~32~~19 members as follows:

a. ~~Six~~Two members representing public, postsecondary, and vocational education.

b. ~~Two members~~One member representing community-based organizations.

c. ~~Six~~Three members representing labor.
d. ~~Eighteen~~Thirteen members representing business and industry.
(3) The terms of the members appointed by the Governor shall be for four years.

(c) Appointment of Chair; Meetings. – The Governor shall appoint the Chair of the Commission from among the business and industry members, and that person shall serve at the pleasure of the Governor. The Commission shall meet at least quarterly upon the call of the Chair.

(d) Staff; Funding. – The clerical and professional staff to the Commission shall be provided by the Department of Commerce. Funding for the Commission shall derive from State and federal resources as allowable and from the partner agencies to the Commission. Members of the Commission shall receive necessary travel and subsistence in accordance with State law.

(e) Agency Cooperation; Reporting. – Each State agency, department, institution, local political subdivision of the State, and any other State-supported entity identified by or subject to review by the Commission in carrying out its duties under subdivision (6) of subsection (a) of this section must participate fully in the development of performance measures for workforce development programs and shall provide to the Commission all data and information available to or within the agency or entity's possession that is requested by the Commission for its review. Further, each agency or entity required to report information and data to the Commission under this section shall maintain true and accurate records of the information and data requested by the Commission. The records shall be open to the Commission's inspection and copying at reasonable times and as often as necessary.

(f) Confidentiality. – At the request of the Commission, each agency or entity subject to this section shall provide it with sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the Commission to carry out its duties pursuant to this section. The information obtained from an agency or entity pursuant to this subsection (i) is not a public record subject to the provisions of Chapter 132 of the General Statutes and (ii) shall be held by the Commission as confidential, unless it is released in a manner that protects the identity and privacy of individual persons and employers referenced in the information.

(g) Advisory Work Group. – The Commission shall appoint an Advisory Work Group composed of representatives from the State and local entities engaged in workforce development activities to assist the Commission with the development of performance measures."

SECTION 1.(b) The terms of the current members of the North Carolina Commission on Workforce Development appointed pursuant to G.S. 143B-438.10(b)(2) expire on December 31, 2012.

SECTION 1.(c) Beginning October 1, 2012, and quarterly thereafter, the Commission shall make periodic progress reports to the Joint Legislative Workforce Development System Reform Oversight Committee on development and implementation of the workforce development performance measurement system.

SECTION 2.(a) The Commission on Workforce Development shall be the lead agency in collaboration with the Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, and the Department of Administration in providing an effective, integrated workforce development system.

SECTION 2.(b) To provide for effective local services for workforce development in this State, the Commission on Workforce Development shall set criteria and standards for JobLink Career Centers. Local areas shall be afforded the flexibility to determine how to meet these criteria and standards as follows:

(1) The Commission on Workforce Development shall strengthen JobLink Career Center requirements to require center staff to engage in cross-education or cross-training to ensure all staff is familiar with the State,

federal, and local programs offered at the center and the full range of beneficial programs and services available to center customers.

(2) JobLink Career Centers shall use technology to integrate programs and to improve access to services. Distance learning tools and electronic solutions should be employed to provide remote access for customers and a virtual presence for partner workforce development agencies that cannot offer on-site staff.

(3) Each center shall provide cross-education or cross-training for staff to provide seamless services to customers when the usual program service provider is unavailable to provide services.

(4) Each center shall demonstrate partnership with the community college or colleges in its service area.

(5) Each center must have an online presence on the Internet that provides information about its location, operating hours, services, and contact information.

(6) JobLink Career Centers and the Commission on Workforce Development should encourage participation of career development coordinators from local education agencies.

SECTION 2.(c) The Commission on Workforce Development, in collaboration with the Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, and the Department of Administration, shall conduct a review and revision of the memorandum of understanding for JobLink Career Centers in accordance with the requirements of this subsection and any policies adopted by the Commission on Workforce Development. The review shall evaluate whether the memorandum of understanding includes all of the following:

(1) Commitments to provide staff to the centers and use of technology to provide a virtual presence for partner workforce development agencies that cannot provide on-site staff.

(2) Development of coordinated local job development and placement processes.

(3) Integration of job placement with job training provided by community colleges.

(4) Establishment of cross-education and cross-training of center staff.

(5) Participation in cost- and resource-sharing arrangements.

(6) Mandated participation of locally administered programs such as county departments of social services.

(7) Use of technology to improve center efficiencies, such as a common Web-based intake system.

SECTION 2.(d) The Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, the Department of Administration, the Department of Labor, the Department of Public Instruction, and the North Carolina Rural Economic Development Center, Inc., shall appoint a work group that includes representation from their respective workforce development programs to assist in the review and revision of the memorandum of understanding for the JobLink Career Center system, as required in subsection (c) of this section.

SECTION 2.(e) The work group established by subsection (d) of this section shall complete its work on the memorandum of understanding for the JobLink Career Center system by May 15, 2013, so that the revised memorandum becomes effective July 1, 2013. The revisions shall be reported to the Joint Legislative Workforce Development System Reform Oversight Committee by no later than May 15, 2013. The work group shall issue a final report on the implementation of the revised memorandum of understanding that describes the effect of

the revisions on the JobLink Career Center system by no later than December 15, 2014. The work group shall dissolve upon the issuance of this final report.

SECTION 2.(f) The Commission on Workforce Development shall complete its work on JobLink Career Center requirements by May 15, 2013, so that all JobLink Career Centers must utilize the final criteria during the 2013-2014 fiscal year. The Commission shall report on the development of final requirements to the Joint Legislative Workforce Development System Reform Oversight Committee no later than May 15, 2013. The Commission should issue its final report on the implementation of requirements no later than December 15, 2014.

SECTION 3.(a) G.S. 143B-438.11 reads as rewritten:

"**§ 143B-438.11. Local Workforce Development Boards.**

(a) Duties. – Local Workforce Development Boards shall have the following powers and duties:

(1) To develop policy and act as the governing body for local workforce development.

(2) To provide planning, oversight, and evaluation of local workforce development programs, including the local One-Stop Delivery System.

(3) To provide advice regarding workforce policy and programs to local elected officials, employers, education and employment training agencies, and citizens.

(4) To develop a local plan in coordination with the appropriate community partners to address the workforce development needs of the service area.

(5) To develop linkages with economic development efforts and activities in the service area and promote cooperation and coordination among public organizations, education agencies, and private businesses.

(6) To review local agency plans and grant applications for workforce development programs for coordination and achievement of local goals and needs.

(7) To serve as the Workforce Investment Board for the designated substate area for the purpose of the federal Workforce Investment Act of 1998.

(8) To provide the appropriate guidance and information to Workforce Investment Act consumers to ensure that they are prepared and positioned to make informed choices in selecting a training provider. Each local ~~workforce development board~~Workforce Development Board shall ensure that consumer choice is properly maintained in the one-stop centers and that consumers are provided the full array of public and private training provider information.

(9) To provide coordinated regional workforce development planning and labor market data sharing.

(b) Members. – Members of local Workforce Development Boards shall be appointed by local elected officials in accordance with criteria established by the Governor and with provisions of the federal Workforce Investment Act. The local Workforce Development Boards shall have a majority of business members and shall also include representation of workforce and education providers, labor organizations, community-based organizations, and economic development boards as determined by local elected officials. The Chairs of the local Workforce Development Boards shall be selected from among the business members.

(c) Assistance. – The North Carolina Commission on Workforce Development and the Department of Commerce shall provide programmatic, technical, and other assistance to any local Workforce Development Board that realigns its service area with the boundaries of a local regional council of governments established pursuant to G.S. 160A-470."

SECTION 3.(b) Beginning March 15, 2013, and then quarterly until December 15, 2014, the Department of Commerce shall report to the Joint Legislative Workforce Development System Reform Oversight Committee on the status of any realignment of local Workforce Development Board service areas and any regional planning and cooperation required by this act.

SECTION 4.(a) Effective July 1, 2012, G.S. 96-32 reads as rewritten:

"**§ 96-32. Common follow-up information management system created.**

(a) The ~~DES~~ Department of Commerce, Division of Labor and Economic Analysis (DLEA), shall develop, implement, and maintain a common follow-up information management system for tracking the ~~employment status of~~ performance measures related to current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ~~DES~~ DLEA shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) The ~~DES~~ DLEA shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the ~~DES~~ DLEA shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated.

(d) The DLEA shall do the following:

(1) Collaborate with the Commission on Workforce Development to develop common performance measures across workforce programs in the Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, the Department of Administration, and the Department of Public Instruction that can be tracked through the CFS in order to assess and report on workforce development program performance.

(2) Determine whether other workforce development programs not participating in CFS should be required to report information and data.

(3) Provide information from CFS to reporting agencies annually.

(4) Provide training for participating agencies to ensure data quality and consistency.

(5) Develop common data definitions that are shared across agencies contributing information to the system.

(e) The Department of Commerce shall ensure that funding and staff resources for the CFS are not diverted to other programs or systems managed by the Department of Commerce."

SECTION 4.(b) Beginning March 15, 2013, the Department of Commerce shall report quarterly to the Joint Legislative Workforce Development System Reform Oversight Committee on its efforts to strengthen the common follow-up information management system, with a final report due by December 15, 2014.

SECTION 5.(a) The Department of Commerce shall convene a group of program administrators to develop a plan for a common Internet-based intake system for the State's workforce development efforts, including JobLink Career Centers. To that end, the Department of Commerce, the Department of Health and Human Services, and the Department of Administration shall develop jointly a plan that expands the Department of Commerce intake system to include workforce development programs administered by all three State agencies.

The plan should include how the database will work, an implementation time line, estimated costs, and a method to pay for the up-front and ongoing costs of the system. The Department of Commerce should present the plan to the Joint Legislative Workforce Development System Reform Oversight Committee no later than July 1, 2013.

SECTION 5.(b) The Department of Commerce, in expanding its workforce development Internet Web site, shall include hyperlinks to information on the following:

(1) All workforce development programs.
(2) The location and operating hours of service providers and community colleges.
(3) Training opportunities and programs.
(4) The State's job matching system.
(5) The State's unemployment insurance filing system.

The unified Web portal shall be completed by July 1, 2013. The Department of Commerce should present and demonstrate the unified Web portal to the Joint Legislative Workforce Development System Reform Oversight Committee by September 15, 2013.

SECTION 6. The North Carolina Community Colleges System Office shall cease operation of the Workforce Initiatives program funded through grants from the Department of Commerce, and the Department of Commerce may reallocate any remaining funds previously appropriated for that purpose.

SECTION 7.(a) The Joint Legislative Workforce Development System Reform Oversight Committee is created. The Committee consists of 16 members to be appointed as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party and at least one cochair of each of the following committees:
   a. Senate Appropriations Committee on Education and Higher Education.
   b. Senate Appropriations Committee on General Government and Information Technology.
   c. Senate Appropriations Committee on Health and Human Services.
   d. Senate Appropriations Committee on Natural and Economic Resources.
(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least two of whom are members of the minority party and at least one cochair of each of the following committees:
   a. House Appropriations Subcommittee on Education.
   b. House Appropriations Subcommittee on General Government.
   c. House Appropriations Subcommittee on Health and Human Services.
   d. House Appropriations Subcommittee on Natural and Economic Resources.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House of Representatives each shall designate a cochair of the Joint Legislative Workforce Development System Reform Oversight Committee. The Committee shall meet at least once per quarter, except while the General Assembly is in regular session, and may meet at other times upon the joint call of the cochairs.

A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

SECTION 7.(b) Purpose and powers. – The Joint Legislative Workforce Development System Reform Oversight Committee shall monitor and oversee efforts to streamline the workforce development system, enhance accountability for the workforce development system, strengthen the JobLink Career Center system, implement technology to integrate programs at JobLink Career Centers, and improve access to workforce development activities. In conducting this monitoring and oversight, the Committee shall do all of the following:

(1) Review reports prepared by the Department of Commerce, the Commission on Workforce Development, and any other State, local, or non-State entity related to the workforce development system.

(2) Monitor the integration of workforce development programs from the former Employment Security Commission into the Department of Commerce.

(3) Monitor the implementation of any realignment of the local workforce development areas based on the regional council structure.

(4) Monitor and review the development and implementation of the performance measures developed by the Commission on Workforce Development.

(5) Monitor the implementation of improvements to the common follow-up information management system authorized by G.S. 96-30 through G.S. 96-35.

(6) Monitor and review the programmatic requirements and the memorandum of understanding for the JobLink Career Center system.

(7) Monitor and review the development plan of the common Web-based intake form for workforce development programs.

(8) Study any other matter related to the workforce development system that the Committee deems necessary to accomplish its purpose.

SECTION 7.(c) Additional Powers. – The Joint Legislative Workforce Development System Reform Oversight Committee, while in discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Committee, or secure any evidence under G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

SECTION 7.(d) Reports to Committee. – Whenever a State agency is required by law to report to the General Assembly or to any of its permanent, study, or oversight committees or subcommittees on matters affecting the workforce development system, the Department shall transmit a copy of the report to the cochairs of the Joint Legislative Workforce Development System Reform Oversight Committee.

SECTION 7.(e) Interim and Final Reports. – The Committee shall make an interim report to the 2014 Session of the 2013 General Assembly and a final report to the 2015 Regular Session of the 2015 General Assembly. The interim and final reports may contain any legislation needed to implement a recommendation of the Committee. The Committee shall terminate upon filing its final report.

SECTION 8. This act is effective when it becomes law.

SENATE BILL 815:
Reform Workforce Development

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2012
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 815 amends the State's workforce development laws, modifies the membership of the Commission on Workforce Development, and establishes the Joint Legislative Workforce Development System Reform Oversight Committee.***

BILL ANALYSIS:

Commission on Workforce Development: Amends the duties of the Commission to include the following:

- Submission of an annual comprehensive report to the Governor, to the General Assembly, to State and local agencies, and to the business sector on workforce development in the State.
- Evaluation of workforce development plans and programs in addition to mere review of those activities.
- Assessment of the effectiveness of the State's workforce development system through performance of the workforce development programs administered by the Department of Administration (DOA), the Department of Commerce (Commerce), the Department of Health and Human Services (DHHS), the Department of Public Instruction (DPI), and the Community College System Office (CC System Office). An annual report on the performance measures must be submitted to the General Assembly beginning January 1, 2014.
- Serve as the lead agency in the collaboration between DOA, Commerce, DHHS, DPI, and the CC System Office in providing an effective, integrated workforce development system.
- Lead the development of the memorandum of understanding for JobLink Career Center System, including coordinating the activities of workforce development work groups and coordinating with Commerce on the common follow-up information management system (CFS).

Workforce Development Commission Membership: The Commission membership is reduced from 38 to 25. The DOA Secretary is added, and the Assistant Commerce Secretary is removed. The Governor's appointments are reduced from 32 to 19. Terms of the current members of the Commission will expire December 31, 2012. The term of office for members appointed by the Governor remains four years.

Confidentiality: The Commission may obtain sworn and unsworn reports from agencies and entities subject to review and assessment. Information received from those reports is not subject to the Public Records Act and but must be held by the Commission as confidential.

Advisory Work Group: The Commission must appoint an Advisory Workgroup of representatives from the DOA, Commerce, DHHS, DPI and the CC System Office to assist with the development of workforce development system performance measures.

Reporting: In addition to various other reporting requirements, the Commission must report quarterly to the newly created Joint Legislative Workforce Development System Reform Oversight Committee (Reform Oversight Committee).

Local & Regional Coordination: Local workforce development boards are required to provide coordinated regional workforce development planning and labor market data sharing. The Commission and DOA are required to provide programmatic, technical, and other assistance to any local workforce development board

that realigns its service area with the boundaries of a local regional council of government. Commerce is to report to the Reform Oversight Committee on the status of realignment and regional planning.

Common Follow-up System: Commerce and the Division of Labor and Economic Analysis (DLEA) are directed to strengthen the CFS, and to collaborate with the Commission in developing common performance measures across the workforce programs administered by DOA, Commerce, DHHS, DPI, and CC System Office. A final report to the Reform Oversight Committee is due by December 15, 2014.

Web-Based Workforce Development Effort: Commerce is directed to convene a group of program administrators to develop a plan for a common Internet-based intake system for the State's workforce development efforts. The plan must be reported to the Reform Oversight Committee by July 1, 2013. In expanding its Internet Web site, Commerce will create hyperlinks that provide users with access to (i) information on all workforce development programs, (ii) the location and operating hours of service providers, (iii) training programs and opportunities, (iv) job matching systems, and (v) unemployment insurance information.

Workforce Initiatives Program Ended: The CC System Office is directed to case operation of the Workforce Initiatives Program.

Reform Oversight Committee Established: The Joint Legislative Workforce Development System Reform Oversight Committee is created. The Committee consists of 16 members, with eight each appointed by the Speaker of the House of Representatives and President Pro Tempore of the Senate. The Reform Oversight Committee will provide an interim report to the 2014 Regular Session of the 2013 General Assembly and terminates upon submitting its final report to the 2015 General Assembly. The Committee's purpose and powers include all of the following:

(1) Review reports prepared by Commerce, the Commission on Workforce Development, and any other State, local, or non-State entity related to the workforce development system.

(2) Monitor the integration of workforce development programs from the former Employment Security Commission into Commerce.

(3) Monitor the implementation of any realignment of the local workforce development areas.

(4) Monitor and review the development and implementation of the performance measures developed by the Commission on Workforce Development.

(5) Monitor the implementation of improvements to the common follow-up information management system authorized by G.S. 96-30 through 96-35.

(6) Monitor and review the programmatic requirements and the memorandum of understanding for the JobLink Career Center system.

(7) Monitor and review the development plan of the common Web-based intake form for workforce development programs.

(8) Study any other matter related to the workforce development system that the Committee deems necessary to accomplish its purpose.

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

Phyllis Picket, Joyce Jones, and Luke Gillenwater substantially contributed to this summary.

S815-SMTD-122(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 177
Committee Substitute Favorable 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H177-CSTA-4 [v.6]

6/5/2012 4:33:27 PM

Short Title: Clean Energy Transportation Act. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO: (1) CREATE AN INTERAGENCY TASK FORCE TO STUDY THE FEASIBILITY AND DESIRABILITY OF ADVANCING THE USE OF ALTERNATIVE FUELS BY STATE AGENCIES AND THE DEVELOPMENT OF ASSOCIATED FUELING INFRASTRUCTURE; (2) ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS AND; (3) AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW.

The General Assembly of North Carolina enacts:

PART I. CREATE AN INTERAGENCY TASK FORCE TO STUDY THE FEASIBILITY AND DESIRABILITY OF ADVANCING THE USE OF ALTERNATIVE FUELS BY STATE AGENCIES AND THE DEVELOPMENT OF ASSOCIATED FUELING INFRASTRUCTURE

SECTION 1.(a) It is the intent of the General Assembly to reduce the costs of fuel used by State agencies and transition to the use of cleaner, more cost-effective, and where available, State-produced fuel resources for transportation purposes.

SECTION 1.(b) The State Energy Office within the Department of Commerce, in consultation with the Department of Administration, Department of Public Instruction, Department of Transportation, and other agencies as applicable, shall create an interagency task force responsible for studying the feasibility and desirability of advancing the use of alternative fuels, as defined in G.S. 143-58.4, by State agencies. As part of its study, the State Energy Office shall perform a cost-benefit analysis on each alternative fuel, using both current and projected fuel pricing, to identify the fuel or fuel mix that would be the most cost-effective for each type of vehicle used by each agency. The State Energy Office shall evaluate the cost of alternative fueled vehicles including the purchase price and operations and maintenance costs. The State Energy Office shall also review the costs for any associated fueling infrastructure necessary to support the operation and maintenance of the vehicles that use the alternative fuels evaluated in the study. In its review of associated fueling infrastructure, the State Energy Office shall identify opportunities for the use of existing commercial or public fueling infrastructure, the potential for leveraging State funds with other public or private monies in order to develop new fueling infrastructure, and the duration of public-private fuel contracts in order to minimize the costs to the State. Based on the results of the study, the State Energy

Office shall make recommendations on which fuel or fuel mix and types of alternative fueled vehicles would be appropriate for each agency, taking into account costs, geographic considerations, population densities, and access to available infrastructure.

SECTION 1.(c) The Task Force shall report the results of its study and any recommendations to the Joint Legislative Commission on Energy Policy on or before December 1, 2012.

PART II. ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS

SECTION 2.(a) The Department of Transportation may operate an electric vehicle charging station at State-owned rest stops along the highways only if all of the following conditions are met:

(1) The electric vehicle charging station is accessible by the public.

(2) The Department has developed a mechanism to charge the user of the electric vehicle charging station a fee in order to recover the cost of electricity consumed, the cost of processing the user fee, and a proportionate cost of the operation and maintenance of the electric vehicle charging station.

SECTION 2.(b) If the cost of the electricity consumed at the electric vehicle charging stations cannot be calculated as provided by subsection (a) of this section, the Department shall develop an alternative mechanism, other than electricity metering, to recover the cost of the electricity consumed at the vehicle charging station.

SECTION 2.(c) The Department may consult with other State agencies and industry representatives in order to develop the mechanisms for cost recovery required pursuant to subsection (a) of this section.

SECTION 2.(d) Beginning January 1, 2013, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section.

PART III. AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW

SECTION 3.(a) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 2(a), 2(b), and 2(c) of Senate Bill 709 read as rewritten:

"**SECTION 2.(a)** Development of ~~Governors'~~ Regional Interstate Offshore Energy Policy Compact. – The Governor ~~is directed to commence~~shall lay the groundwork for development of a regional energy ~~compact~~ strategy by working with the governors of South Carolina and Virginia ~~in order~~ to develop recommendations for creation and implementation of a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor is authorized to work directly with each of the three states' General Assemblies, Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration,

development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

"**SECTION 2.(b)** No later than three months after the effective date of this act, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report ~~her~~ the Governor's final recommendations for the ~~three-state energy compact~~regional energy strategy to the ~~Joint Regulatory Reform Committee no later than May 1, 2012.~~ President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than December 31, 2012.

"**SECTION 2.(c)** In addition to the provisions in Sections 2(a) and 2(b) of this act, the Governor is strongly encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States."

SECTION 3.(b) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 3(a) and 3(b) of Senate Bill 709 are repealed.

SECTION 3.(c) If Senate Bill 709 of the 2011 Regular Session becomes law, G.S. 113B-3, as amended by Senate Bill 709, reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Jobs Council shall consist of 12 members to be appointed as follows:

(1) Repealed.

(2) Repealed.

(2a) The Secretary of Commerce.

(3) Eleven public members who are citizens of the State of North Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy Jobs Council shall be made by ~~October 1, 2011,~~September 1, 2012, and the appointed members shall serve four-year terms.

Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy Jobs Council shall have the qualifications and shall be appointed as follows:

(1) One member shall be a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be a geologist experienced in ~~offshore~~ natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

(3) One member shall be a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore of the Senate.

(4) One member shall be an energy economist or a person with experience in the financing or business development or an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall be a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore of the Senate.

(6) One member shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of energy, other than wind energy, to be appointed by the Speaker of the House of Representatives.

(8) One member who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) One member shall be a representative with experience in wind energy, to be appointed by the Governor.

(11) One member shall be a representative with experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) One member shall be ~~involved with the biofuels industry;~~ experienced in energy policy, to be appointed by the President Pro Tempore of the Senate."

PART IV. EFFECTIVE DATE

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

HOUSE BILL 177:
Clean Energy Transportation Act

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2012
Introduced by:	Reps. Samuelson, McElraft	**Prepared by:**	Jennifer Mundt
Analysis of:	PCS to Second Edition H177-CSTA-4 [v.6]		Legislative Analyst

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 177 would:

- ***Create an interagency task force directed to study the feasibility and desirability of advancing the use of alternative fuels by State agencies and the development of associated fueling infrastructure.***
- ***Establish criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways.***
- ***Amend the Energy Jobs Act of 2011 should it become law.***

BILL ANALYSIS: The PCS for House Bill 177 would:

Section 1: Direct the State Energy Office in the Department of Commerce, in consultation with the Departments of Administration, Public Instruction, Transportation, and other agencies as applicable, to create an interagency task force responsible for studying the feasibility and desirability of advancing the use of alternative fuels by State agencies. As part of its study, the Task Force must perform a cost-benefit analysis on each alternative fuel and review the costs of associated fueling infrastructure necessary to support the operation and maintenance of the alternative fueled vehicles that use the fuels evaluated in the study. The Task Force must report the results of its study, including any recommendations, to the Joint Legislative Commission on Energy Policy on or before December 1, 2012.

Section 2: establish the following criteria for the operation of electric vehicle charging stations at State-owned rest stops along the highways:

- The charging stations must be accessible by the public.
- The Department of Transportation must develop a mechanism to charge the user of the charging station a fee to recover the costs of the electricity consumed, processing fees, and operations and maintenance.

Section 3: amend the Energy Jobs Act of 2011 if it were to become law as follows:

- Directs the Governor to develop a regional strategy with the Governors of South Carolina and Virginia for the exploration, development, and production of commercially viable federal and state offshore energy resources within the three-state region and report on the strategy to the President Pro Tempore and the Speaker of the House.
- Amends some of the qualifications and the timeframe for appointments made to the Energy Jobs Council.

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

H177-SMTA-12(CSTA-4) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 462
PROPOSED COMMITTEE SUBSTITUTE H462-CSTD-66 [v.2]

6/6/2012 6:33:07 PM

Short Title: Contingency Contracts for Audits/Assessments. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO LIMIT USE OF CONTINGENT-BASED CONTRACTS FOR AUDIT OR ASSESSMENT PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-243.1 is amended by adding a new subsection to read:

"(a1) In determining the liability of any person for a tax, the Secretary may not employ an agent who is compensated in whole or in part by the State for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the person."

SECTION 2. G.S. 105-299 reads as rewritten:

"**§ 105-299. Employment of experts.**

The board of county commissioners may employ appraisal firms, mapping firms or other persons or firms having expertise in one or more of the duties of the assessor to assist the assessor in the performance of these duties. The county may also assign to county agencies, or contract with State or federal agencies for, any duties involved with the approval or auditing of use-value accounts. The county may make available to these persons any information it has that will facilitate the performance of a contract entered into pursuant to this section. Persons receiving this information are subject to the provisions of G.S. 105-289(e) and G.S. 105-259 regarding the use and disclosure of information provided to them by the county. Any person employed by an appraisal firm whose duties include the appraisal of property for the county must be required to demonstrate that he or she is qualified to carry out these duties by achieving a passing grade on a comprehensive examination in the appraisal of property administered by the Department of Revenue. In the employment of these firms, primary consideration must be given to the firms registered with the Department of Revenue pursuant to G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a copy of the proposed contract may be sent by the board to the Department of Revenue for review before the invitation or acceptance of any bids. Contracts for the employment of these firms or persons are contracts for personal services and are not subject to the provisions of Article 8, Chapter 143, of the General Statutes. If the board of county commissioners employs any person or firm to assist the assessor in the performance of the assessor's duties, the person or firm may not be compensated, in whole or in part, on a contingent fee basis or any other similar method that may impair the assessor's independence or the perception of the assessor's independence by the public."

SECTION 3. Chapter 116B-8 reads as rewritten:

"**§ 116B-8. Employment of persons with specialized skills or knowledge.**

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as the Treasurer deems necessary or appropriate for the administration of this Chapter, including valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. ~~Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to twelve percent (12%) of the final assessment.~~If the Treasurer contracts with any other person to conduct an audit under this Chapter, the audit shall not be performed on a contingent fee basis or any other similar method that may impair an auditor's independence or the perception of the auditor's independence by the public."

SECTION 4. G.S. 153A-146 reads as rewritten:

"**§ 153A-146. General power to impose taxes.**

A county may impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax includes the power to impose reasonable penalties for failure to declare tax liability, if required, and to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. In determining the liability of any taxpayer for a tax, a county may not employ an agent who is compensated in whole or in part by the county for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the taxpayer. The power to impose a tax also includes the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax."

SECTION 5. G.S. 160A-206 reads as rewritten:

"**§ 160A-206. General power to impose taxes.**

A city shall have power to impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. In determining the liability of any taxpayer for a tax, a city may not employ an agent who is compensated in whole or in part by the city for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the taxpayer. The power to impose a tax shall also include the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax."

SECTION 6. This act becomes effective July 1, 2012, and applies to audits, determinations of liability, and assessments contracted for on or after that date.

HOUSE BILL 462:
Contingency Contracts for Audits/Assessments.

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2012
Introduced by:	Rep. McCormick	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition H462-CSTD-66		Committee Counsel

SUMMARY: ***The PCS to House Bill 462 would prohibit the Department of Revenue, local governments, and the Treasurer's office from using third-party contractors paid on a contingent fee basis for audit and assessment purposes.***

CURRENT LAW: G.S. 105-243.1 authorizes the Department of Revenue to outsource the collection of tax debts. The Department currently does not utilize third-party contractors paid on a contingent basis.

Cities and counties are authorized under their general corporate powers to contract with third parties, including contracts on a contingent fee basis. In addition, counties are authorized to employ individuals or firms with expertise to assist the county assessor.

The Treasurer's office is authorized to employ experts to assist in the administration of the Unclaimed Property Act. The fees for experts that are employed for this purpose on a contingent fee basis by the Treasurer's office are limited to 12% of the final assessment.

BILL ANALYSIS: The PCS to House Bill 462 prohibits the Department of Revenue, local governments, and the Treasurer's office from using third parties paid on a contingent fee basis for audit and assessment purposes.

Section 1: Prohibits the Secretary of Revenue from employing an agent paid on a contingent fee basis to determine the tax liability of any taxpayer.

Section 2: Prohibits counties from employing entities paid on a contingent fee basis to assist a county tax assessor.

Section 3: Prohibits the Treasurer's office from contracting with entities paid on a contingent fee basis for administration of the Unclaimed Property Act.

Sections 4 and 5: Prohibits cities and counties employing agents paid on a contingent fee basis to determine the tax liability of any taxpayer.

EFFECTIVE DATE: This act is effective July 1, 2012, and applies to audits, determinations of liability, and assessments contracted for on or after that date.

H462-SMTD-123(CSTD-66) v2

HOUSE BILL 462:
Contingency Contracts for Audits/Assessments.

2011-2012 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2012
Introduced by:	Rep. McCormick	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition H462-CSTD-66		

SUMMARY: ***The PCS to House Bill 462 would prohibit the Department of Revenue, local governments, and the Treasurer's office from using third-party contractors paid on a contingent fee basis for audit and assessment purposes.***

CURRENT LAW: G.S. 105-243.1 authorizes the Department of Revenue to outsource the collection of tax debts. The Department currently does not utilize third-party contractors paid on a contingent basis.

Cities and counties are authorized under their general corporate powers to contract with third parties, including contracts on a contingent fee basis. In addition, counties are authorized to employ individuals or firms with expertise to assist the county assessor.

The Treasurer's office is authorized to employ experts to assist in the administration of the Unclaimed Property Act. The fees for experts that are employed for this purpose on a contingent fee basis by the Treasurer's office are limited to 12% of the final assessment.

BILL ANALYSIS: The PCS to House Bill 462 prohibits the Department of Revenue, local governments, and the Treasurer's office from using third parties paid on a contingent fee basis for audit and assessment purposes.

Section 1: Prohibits the Secretary of Revenue from employing an agent paid on a contingent fee basis to determine the tax liability of any taxpayer.

Section 2: Prohibits counties from employing entities paid on a contingent fee basis to assist a county tax assessor.

Section 3: Prohibits the Treasurer's office from contracting with entities paid on a contingent fee basis for administration of the Unclaimed Property Act.

Sections 4 and 5: Prohibits cities and counties employing agents paid on a contingent fee basis to determine the tax liability of any taxpayer.

EFFECTIVE DATE: This act is effective July 1, 2012, and applies to audits, determinations of liability, and assessments contracted for on or after that date.

H462-SMTD-123(CSTD-66) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/7/12

S. B. No. 462 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Sen.) Newton

1 moves to amend the bill on page 2, line 44
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the following after the
4 period:"
5 "~~No unit of local government may~~
6
7 "No unit of local government and
8 the Treasurer shall not renew
9 any existing ~~contracts~~ contingency
10 fee-based contracts for
11 these services after July 1, 2012.".
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE PAGES ATTENDING

COMMITTEE: Commerce **ROOM:** 1027

DATE: 6-7 **TIME:** 11 AM

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

Page Name	Hometown	Sponsoring Senator
1 Bryles Cutts	Henderson	Doug Berger
2 Beverly Foster	Henderson	Doug Berger
3 Charles Keen	Raleigh	Phil Berger
4 ~~Richard Whelan~~	~~High Point~~	Vaughn
5 ~~Peter Ojo~~	Fayetteville.	Mansfield
6 ~~Bethany Harden~~	Raleigh	Tillman
7 Ryan Phillips	Pinehurst	Blake
8 Tristan Gordon	Monroe	Tucker
9 ~~Catherine Blalock~~	Asheville	senator Nesbitt
10 Meghan Breden	Wilkesboro	Dan Soucek

Do not add names below the grid.

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

Box #	Year	Chamber	Committee
11	2011-2012	Senate	Education/Higher Education
11	2011-2012	Senate	Finance
11	2011	Senate	Health Care